

PROCEEDING

OF THE NATIONAL WORKSHOP ON



In Sustainable Development

In Ethiopia

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Mekelle, **Ethiopia**



Editors & Rapporteurs:

Zbelo H/slassie
Gebreamlak Yeabyo



Organized by

Tilburg University School Law and
Mekelle University School of Law in Collaboration with
Forum for Environment (FfE) and NWO/WOTRO



Forum for Environment



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Professor Jonathan Verschuuren
(Project Leader)

During 2018 and 2019, an international team of researchers from the fields of law and social sciences of the Universities of Mekelle (Ethiopia) and Tilburg (Netherlands) jointly researched the impact of restrictive civil society laws on civil society organisations working in the area of sustainable development. This project was sponsored by the Netherlands Organisation for Scientific Research (NWO) and the Netherlands Ministry of Foreign Affairs under their programme ‘Supporting the Political Role of Civil Society Organisations for Inclusive Development’.

The project focused on Ethiopia as this country can serve as an important case study in research on the law-sustainable development-civil society nexus. In Ethiopia, civil society organizations (CSOs) have played an important role in advancing sustainable development by raising public awareness, developing their own capacity, and engaging with the State. However, these organizations have faced a number of important legal, financial, social and other structural barriers that have limited their effectiveness and reach due to the State deliberately and effectively closing the political space for CSOs through legal measures between 2009 and 2019. During this period, the State ignored the liberal rights and freedoms embodied in its constitution. As political space is the precondition for performing political roles this project aimed to shed more light on the restricted legal environment within which CSOs operate, and on the impact this legal environment should have on policies and actions of the Ministry and northern CSOs.

Our main research question was: What legal instruments are used by Ethiopia to close CSOs’ political space, and how do these, and their impact, relate to internationally accepted human rights and constitutional rights aimed at protecting civil society?

During 2018 and 2019, important political changes occurred in Ethiopia which lead to legal changes aimed at reopening civic space for CSOs. With the arrival of legal reform in the middle of our project pe-

riod, we adjusted our focus to also include an analysis of the new law and on what is needed for a successful transition.

The project consisted of three phases. First, we developed the theoretical legal framework aimed at protecting CSO political space within the rule of law through a desk study of the literature, including literature on human rights, constitutional rights and sustainable development law. We also looked at primary legal sources (relevant international and domestic law, with a focus on Ethiopia and - as a benchmark for effective CSO laws - South Africa). Then, we turned our attention to Ethiopia by researching the Ethiopian CSO-legislation and relevant literature, as well as through empirical research. The empirical research mainly consisted of semi-structured interviews with CSO staff in various parts of Ethiopia (both domestic and international CSOs) and situational observations. The CSOs were selected according to three criteria: good track record in their work on sustainable development, working across regions or in a number of different regions throughout the country, falling within different legal cat-

egories of the Ethiopian CSO laws. In addition, interviews were conducted with various northern CSOs in Europe that work (or worked) in Ethiopia, and with the Netherlands embassy in Ethiopia.

In the third phase, we sought to get feedback on our findings from the broader Ethiopian CSO community as well as from other stakeholders such as government bodies, the judiciary and academics. The researchers from the two universities, with the help of The Forum for the Environment, the most important national NGO in the area of sustainable development in Ethiopia which acted as our main outreach platform to disseminate our findings to the wider public in Ethiopia, organized a major conference at Mekelle University in May 2019. The document which is in front of you represents the proceedings of this conference. The conference was a big success. It attracted around 60 participants from various CSOs (on environment, socio-economic development, consumer protection), from legal aid centres and a legal training centre, from various government authorities and courts (the Charities and Societies Agency -

now the CSOs Agency -, the Federal Environment Forest and Climate Change Commission, the Regional Environmental Protection Office, the Regional Bureau of Justice, and the Regional Supreme Court), from the media, and from various research institutes. As you will read in the following pages, many of our findings were acknowledged by the people present at the conference, such as the finding that organizational space for CSOs is pivotal for their more politically oriented work, and that there is no clear separation between service delivery and advocacy work. This should be taken into account by the domestic authorities as well as funders and northern CSOs. The very lively debates and discussions also gave rise to important new insights and suggestions. Thanks to the wonderful work of the rapporteurs Zbelo H/slassie and Gebreamlak Yeabyo, these insights and suggestions were recorded in these proceedings. I trust these proceedings will be inspiring for all of you.

Tilburg, 26 August 2019



An Overview of the **PROJECT**

On the 26th and 27th of May 2019, academics, civil society representatives and government officials came together to participate in a national workshop on the subject of civil society and sustainable development in Ethiopia. In this workshop, researchers from Mekelle University School of Law (Ethiopia) and Tilburg University School of Law (The Netherlands) presented the findings of a research project that investigated how CSOs operate in a restrictive environment and asked what lessons could be drawn from their particular experiences. The research project formed part of a research programme entitled ‘New roles of CSOs for inclusive development’, funded by the Dutch Research Council (NWO) in collaboration with WOTRO Science for Global Development.

The NWO/WOTRO Call for Proposals focused on three thematic areas, namely the political roles of civil society organizations (CSOs) in low- and lower-middle-income countries (LLMICs), the aid chain and civic space under pressure. Together, Dr Desta G/Michael Gidey, Mekelle University (MU) School of Law, (the co-applicant) and Professor Jonathan Verschuuren, Tilburg University (TiU) School of Law, (the main applicant) were awarded a grant to conduct research on the topic “CSOs in Sustainable Development: Broadening the Role of CSOs in Sustainable Development in Ethiopia”.

In addition to Professor Verschuuren and Dr Gidey, the research team included two post-doctoral researchers based at TiU, Dr Dina Townsend and Dr Nicky Broeckhoven, and a social scientist based at MU, Dr Kelemework Tafere Reda. In addition, three master’s students from the Natural Resources Governance Master (NRGM) program at MU School of Law were hired for eight months as data collectors and researchers.

The research project fell under the third of the themes identified by NWO/WOTRO, namely ‘Civic space under pressure’. While all three themes might be investigated in the Ethiopian context, the third theme is particularly relevant to Ethiopia in light of the shrinking of ‘civic space’ in the country following the adoption of the controversial Charities and Societies Proclamation (CSP) of 2009. The research focused on investigating the implications and impacts of the Ethiopian legal and policy framework on the functioning of CSOs, with a particular focus on CSOs working on sustainable development. The project lasted for 18 months, at the end of which the researchers hosted a national workshop for the purpose of disseminating the interim findings and testing and assessing these findings. This document records the proceedings of the workshop.



PRESENTATIONS

The master of ceremonies, Dr Tsegai Brhane, invited the keynote speaker of the national workshop, Professor Kindeya Gebrehiwot, President of Mekelle University, to open the workshop.

Professor Gebrehiwot stated that it is a great honor for the university to host such an important event. He asserted that sustainable development is a key component of the development of any country. He highlighted the importance of raising overlooked issues, agendas and questions, and he emphasized the importance of assessing the role of civil society in promoting the goals of sustainable development. Professor Gebrehiwot remarked that the workshop is expected to generate important discussion and research findings that will have great value in the long-term.



1

Research Questions And Methodology

After the Keynote speaker, the first presentation was given by Dr Kelemework Tafere Reda. Dr Reda first discussed the research questions of the research project. The research project was guided by three main research questions:

1. What legal instruments are used by the State to close/(re)open CSO's political space?
2. What are the impacts of these instruments on the role CSOs play in securing sustainable development?
3. How do we assess this in light of internationally accepted human rights and constitutional rights?

The research process consisted of three main work packages. The first one consisted of a law and literature review of the relevant literature. In the second work package, the team carried out empirical research. In the third and final stage, the empirical data was analyzed and a final report was developed.

The research process was carried out by observing the following research methods and procedures. The data capturing was carried out by Dr Reda, Dr Gidey, Dr Broeckhoven, Dr Townsend and three postgraduate students. Methodologically, the presenter noted that twenty-eight semi-structured interviews were conducted with CSO employees as well as with researchers, trade unions, and officers of the Charities and Societies Agency (CSA). In addition to the interviews, postgraduate students were placed with selected CSOs to conduct situational analyses. During the situational analyses, students observed the functioning of CSOs and their engagement with the law.

Dr Reda proceeded to present the data analysis process. He indicated that the data was organized and interpreted qualitatively from a socio-legal perspective. To ensure reliable, valid and high quality data, Dr Reda indicated that data was taken from a variety of sources and different data gathering techniques were employed. The findings and assessments were relayed back to the interviewees to ensure that the data was recorded accurately, to get feedback and to ensure the ongoing participation of the interviewees.

2 The 2009 Charities And Societies Proclamation (CSP)

Next, Dr Gidey presented on the 2009 Ethiopian CSP and its impact on CSOs. He started with a brief history of CSOs in Ethiopia. He stated that community-based and religious organisations have a long history in Ethiopia. These include traditional self-help groups like Edirs, Equbs and other informal groups that have existed for generations in Ethiopia. However, formal or modern CSOs have a relatively recent history in Ethiopia. Some CSOs began to operate as faith-based organizations in the 1930s while welfare organizations, such as the Red Cross, began operating in Ethiopia in the 1950s. The number of CSOs operating in Ethiopia increased in the wake of the famines in the 1970s and 1980s, although these organisations mainly focused on relief and humanitarian services.

After the downfall of the militarist Derg regime in 1991, CSOs steadily grew in both number and size. More than 3000 CSOs were formally registered at the federal level before the adoption of the restrictive CSP in 2009. This was mainly due to the opening of political space for CSOs that came with the adoption of the FDRE Constitution in 1994. The Constitution guarantees basic liberal rights and freedoms, including the rights to freedoms of expression, association and assembly. However, the Constitution does not provide absolute guarantee for these rights. It prohibits organizations formed in violation of appropriate laws, as well as organisations that seek to illegally subvert the constitutional order, or promote such activities.

The question arises, then, as to what makes a law appropriate? In particular, was the 2009 CSP appropriate? The 2009 CSP changed the political landscape for CSOs in Ethiopia. The preamble to the CSP states that it was enacted “to ensure the realization of citizens’ right to association” enshrined in the FDRE Constitution and “to aid and facilitate the role of CSOs in the overall development of Ethiopian peoples” (CSP Preamble, Paras 1 and 2). Despite this expressed intention, however, the CSP employed different regulatory tactics to restrict and control the activities and funding of CSOs. It significantly increased the state’s discretionary oversight power over CSO activities. Under the CSP, CSOs were categorized in three groups and this categorization had various far-reaching legal implications. The first groups of CSOs were Ethiopian Charities or Societies. These were organizations formed under the laws of Ethiopia, whose members were all Ethiopians, who generated at least 90% their income from Ethiopian sources, and who were wholly controlled by Ethiopians. Ethiopian Residents Charities or Societies were organizations formed under the laws of Ethiopia, whose members reside in Ethiopia, and who receive more than 10% of their funds from foreign



sources. The last group of CSOs were foreign charities, who were formed under the laws of foreign countries or whose members were foreign nationals, or who were controlled by foreign nationals, and who received more than 10% of their funds from foreign sources.

A CSO's classification had far-reaching implications for their funding and the kind of work they could do. CSOs in the first group faced no restrictions in regard to the work they could do, but they were required to raise at least 90% of their funding from domestic sources. On the other hand, the second two groups of CSOs did face work restrictions – they were prohibited from working on advocacy or right-based activities. They were free, however, to raise more than 10% of their funds from foreign sources.

Under the CSP, all CSOs were subject to the '70/30' rule in terms of which CSOs were required to allocate at least 70% of their expenses in the budget year to operational costs and to allocate no more than 30% of their expenses to administrative activities. The CSP's definition of 'administrative activities' was broad and vague. The rule particularly affected Ethiopian CSOs because of their legally limited access to foreign funding as mentioned above.

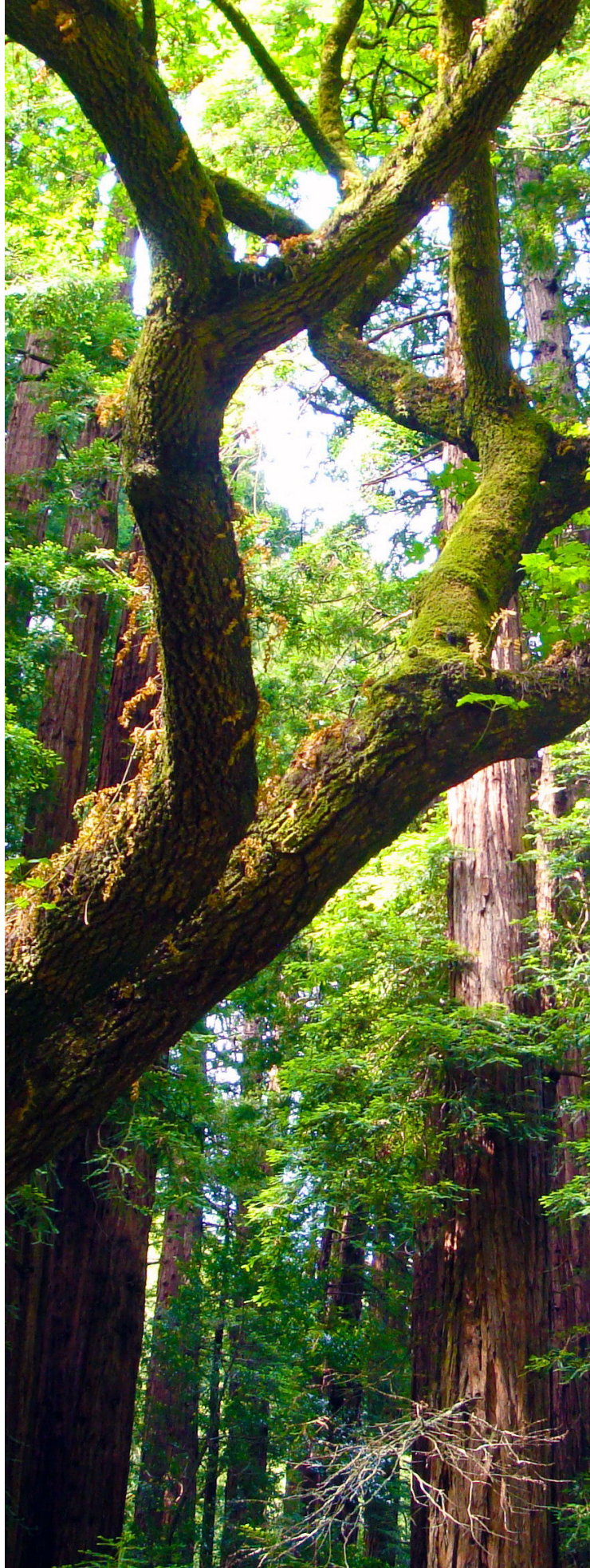
On a positive note, the CSP was the first comprehensive law adopted to regulate CSOs in Ethiopia and some CSOs recognized some of its positive impacts. These included enhancing collaboration between CSOs and their constituencies; creating functional linkage between CSOs and relevant line ministers/sector administrators; improving the transparency, accountability and efficiency of CSOs in resource mobilization and utilization; and enhancing the public legitimacy of CSOs.

However, the law also had a number of severe negative impacts on CSOs. According to data obtained in July 2018 from the Charities and Societies Agency (CSA), 137 Ethiopian charities and 366 Ethiopian societies; 2281 Ethiopian Resident charities and 85 Ethiopian resident societies, 412 foreign charities; and 53 Consortia were active in Ethiopia. The majority of CSOs registered or reregistered as Ethiopian Resident CSOs to avoid the extremely restrictive funding constraints on Ethiopian CSOs. As a result, these CSOs were subject to the work restrictions prescribed in the law and were

compelled to change their role from advocacy to service provision. The law compelled many CSOs, regardless of their classification, either to restrict the outreach of their activities, to downsize the number of their employees or to close down and stop their operations. The 70/30 cost rule forced CSOs to cut budgets for staff training and salaries; give up capacity-building training and research activities; and reduce the frequency of field visits to undertake monitoring and evaluation.

These measures adversely affected the scope and the quality of the services rendered by CSOs, which in turn rendered CSOs less attractive partners for international donors because of their inability to meet donor expectations in regard to project design, implementation, and monitoring and evaluation. While CSOs working on multiple issues were able to adapt under the CSP, single-issue CSOs struggled to shift their focus and 're-brand' their activities to fit the requirements of the law. Dr Gidey turned to the second research question, which focused on the impact of the law on CSOs working on matters related to sustainable development. CSOs play a number of roles in advancing and securing sustainable development. These include the following four interrelated political roles: educational, communicative, representational, and cooperative roles. Dr Gidey described these roles as indispensable for democracy and good governance. Dr Gidey stated that the roles assumed by most of the CSOs in Ethiopia have been either communicative or cooperative.

Under the CSP, the majority of CSOs could not play an educational or representational role as a result of the restrictions on advocacy related work. The majority of CSOs were denied the right to work on matters related to democratization, law enforcement and legal literacy, environmental policy advocacy, and fighting the underlying causes of poverty, unsustainability and injustice. The role of many CSOs was reduced to service provision and welfare activities. CSOs were seen by the government as 'gap-fillers' in policy implementation and not as partners in policy- and decision-making. The state's restrictive or exclusionary view of the role of CSOs compromised the constitutionally guaranteed right of citizens to freedom of association, and their ability to participate in an organized manner in the enforcement of other rights and freedoms, including the right to sustainable development.



3

The 2019 CSO Proclamation: The Drafting Process and Improvements

Mr Debebe Hailegebriel, a member of the drafting committee of the new 2019 civil society proclamation, began by giving a brief background on how the new CSO law was developed. A committee was assembled, consisting of nine experts drawn from the legal profession, and asked by the Legal and Justice Reform Council to review the CSP enacted in 2009. The team was also mandated to come up with new draft legislation. More than forty regulatory gaps were identified in the CSP.

The team was tasked with drafting legislation of a high standard. The drafters were mainly guided by the 2018 Freedom of Assembly and Association Guideline developed by the African Commission and other international standards developed by the International Center for Nonprofit Law (ICNL). The drafters also looked at the law and experiences of other African countries including Ghana, Kenya and South Africa, as well as Canada. He admitted that the team had a complete and full autonomy in drafting the new CSO law. In drafting the law, the team consulted and negotiated with government, different stake-holders and individuals from the civil society sector.

Mr Hailegebriel then outlined 13 key areas of change in the new law:

First, the new law comes with a name change. The law no longer refers to charities and societies and instead refers to civil society organizations. The old name did not express the nature or character of the sector. Under the new law, one finds four types of CSOs, namely local NGOs, international NGOs, professional associations and mass-based associations. One also finds consortiums or network organizations. Now the law recognizes international organizations, established in Ethiopia, but operating outside of Ethiopia. Under the new law, both Ethiopians and foreigners who are residing in Ethiopia can establish an organization which operates in and outside of Ethiopia.

Second, the scope of application of the legislation is another point of departure from the old law. The previous law applied to all organizations who were receiving more than 10% of their funds from foreign sources, regardless of where they were operating in the country, and even if they were operating only in one region. Mr Hailegebriel questioned whether this was constitutional and whether the federal government had the power to pass such a law. The new law governs only those CSOs who operate in two or more regions, who operate in Addis Ababa and Dire Dawa, and international NGOs and NGOs operating outside Ethiopia.

The third change relates to the mandate of the CS Agency. Under the old law, the agency had approximately 5 mandates, 4 of which related to controlling CSOs. Under the new law this has been changed to

focus the Agency on creating an enabling environment for CSOs. The drafters tried to achieve a balance between the oversight and the facilitative roles of the Agency. The committee also looked into the accountability of the CS Agency. Initially, the task force proposed that the Agency should be accountable to the House of People Representatives. However, after a discussion with government officials, the Office of the Attorney General has been mandated to supervise and support the Agency.

The fourth change relates to the registration of CSOs. Under the new law, there are now simple and clear registration requirements. Previously, CSOs faced a number of hurdles during the registration process. The registration requirement might open the room for subjectivity or it may take long time or it may be costly for CSOs to comply with. To address this, an attempt has been made to simplify the registration process and to make the requirements for registration clear. Of particular importance, the Agency cannot deny registration for any reason not stated in the legislation. In regard to foreign CSOs, there is no major change in the registration process. They are still required to submit the same document as previously. The requirement to submit a project proposal is not a requirement for a detailed and fixed proposal, rather CSOs are simply required to come up with a two-year project proposal to show what they are planning to do in Ethiopia. Under the old law, CSOs could not join with others to form a consortium. Now there is no such restriction – organizations can form join any consortium or network organization meant for the furtherance of their objectives. The requirement for CSOs to obtain a project agreement from the line Ministries has been removed. It is not required for registration nor is it required after registration.

The fifth change relates to freedom of operation. CSOs can now work in any area as long that area or activity is lawful. Under the previous law, there was a list of activities that certain CSOs could not engage in. Now,

however, it is up to the organizations to decide in which area they want to work and they are free to do so as long as that activity is not prohibited by any other law in the country. What is more, CSOs can work either as a donor or as a project implementer. Previously, the Agency put restrictions on organizations working as donors. Now, however, foreign organizations can work as donors without being required to be implementers. It is possible for international organizations to extend technical and financial support to local CSOs. The new law also has a clear provision encouraging NGOs to engage in policy advocacy work. Previously, only organizations who received less than 10% of their funds from foreign sources could work in advocacy and human rights as these were considered to be political activities. Now all CSOs can work on policy advocacy issues. There is one restriction on foreign CSOs - they cannot engage in civic and voter education and political party lobbying. They require permission from the relevant government authorities to engage directly in this work, but they can still work indirectly in collaboration with local CSOs.

Sixth, the new law guarantees freedom of resource mobilization. The provision on this was taken verbatim from the African Human rights Commission Guideline which states that CSOs have the right to seek, receive and utilize funds. The new law recognizes CSOs' right to access and use their funds from any source as long as it is from any lawful source. CSOs also have the right to own, administer and transfer any property. Previously, all the property owned by CSOs was considered as government or public property. This had a negative impact on the sustainability of CSOs. When an organization was closed, everything was given to the Agency, including the mobile apparatus and documents. Under the new law, CSOs' property rights have been recognised.

The limitation on administrative costs has been reduced to 20% of the overall budget (previously it was 30%). In the new law, however, administrative costs



have been clearly defined, in accordance with internationally accepted standards.

Another point of interest in regard to the resources of CSOs pertains to the right of CSOs to engage in income generating activities, including investing, buying shares and joining any business venture. CSOs may not distribute any profits received to their members, but as long as they use their profit to further their cause, CSOs can engage in any kind of lawful business activity without restriction. Previously, CSOs were allowed to engage in business activities that were incidental to their objectives. Now CSOs can engage in a wide range of business activities and will no longer be wholly dependent on funders.

Seventh, under the 2009 CSP, CSOs were expected to renew their license every three years. Under the new law, this requirement has been removed. Mr Hailegebriel argued that there is no added value in requiring periodic license renewal. In some cases, certain organizations may be required to get additional licenses (for example, in the fields of health and education) and they are expected to abide by the requirement of those license. Now what is required from CSOs is that they submit their annual activity and financial report to the Agency within three months of the end of the financial year. However, if they fail to do so, the Agency is required to make a public announcement asking the relevant organizations to come and prove their existence. This proof of existence rule is based on the practice in Kenya. If the organizations fail to come forward and prove their existence, then the Agency can cancel their registration Eighth, the new law has introduced audit and reporting requirements to ensure CSO accountability. CSOs who have more than 200,000 Birr are required to conduct an annual, external audit. What is more, any interested person (for example, a beneficiary, donor or government) can submit a formal application to the Agency requesting an investigation into an organization if that person believes there has been misconduct on the part of the organization. Based on the application, the Agency may initiate an external audit of an organization. All CSOs are now required to submit their annual activity report to the Agency and they are also expected to make their activity reports,

audit reports and financial reports accessible. CSOs cannot prohibit or prevent any individual or organization from accessing their audit reports. This is one means to ensure their accountability.

Ninth, foreign CSOs are entitled to have one country representative or expat employee. If CSOs want to have more than one foreign employee, they have to prove that a specific position cannot be filled by Ethiopians. According to Mr Hailegebriel, this was done to give priority to Ethiopians and to reduce unemployment in the country. However, he clarified that there is no restriction when it comes to volunteers. Volunteers can be paid a subsistence allowance and they can come and work in Ethiopia without having regular salaries.

Tenth, the Agency is mandated to take administrative measures. The previous law created provisions entailing criminal liability for CSOs in certain circumstances. But now, these provisions have been removed. If you want to encourage freedom of association, you should not include criminal provisions in CSO laws. If there is a need for criminalizing that should be treated like any other ordinary crime rather than establishing special criminal provisions for CSOs.

Eleventh, the Director of the Agency may now take limited administrative measures up to suspension. Previously, even an officer found at a lower rank could close an organization. He could give an order either to suspend the organization or to close its bank account. They have all kinds of power. But now, the new law limits this power. Let alone an officer, even the Director does not have the power to close an organization. The Director's mandate is limited only to suspend an organization for thirty days. CSOs can be dissolved only by the court order and the decision of the CSO Board. And the individual organization also should have the right to be heard.

Twelfth, the establishment of a CSO Council is another new development. All organizations are now required by law to be a member of the CSO Council. This arrangement is included to promote self-regulation in the sector. Therefore, membership is mandatory. The Council will have its own structure and rules. It is free.

There are provisions which seek to ensure the independence of the Council. For example, the Council is free to adopt its own structure and internal rules and it is also free to adopt a code of conduct and enforce the code. The council is mandated to represent the sector. Thirteenth, the establishment of the CSO fund is another new addition. This scheme has been established to administer the property or money of closed organizations. The main source of funding for the CSO fund is the sale or transfer of assets of dissolved CSOs. Government may also contribute to this fund.

FINALLY

Mr Hailegebriel reflected on the key implications of the new law:

- He expects an increase in both the number and the type of CSOs. In particular, we are likely to see an increase in the number of advocacy CSOs (national and international) CSOs, in organizations working on human rights, peacebuilding and democracy, and also an increase in the number of international CSOs. He admitted that the number of international NGOs was not affected under the 2009 CSP. Their number been increasing every year although still remains at around 400. As compared to others CSOs, the number of international CSOs is on the rise. But now we expect more international CSOs.
- He further highlighted that the rights-based approach to sustainable development will get preference. He underscored the importance of rights-based approach to ensure sustainable development. CSOs should also teach the people that they have the right to make demands on the government and to hold government officials accountable. It is not enough for an organization to work on health issues, just to build a clinic and run away. But they (CSOs) have to work in parallel to educate or empower the people that they have the right to health and also to hold government officials accountable to ensure that they allocate sufficient budget for health. So a rights-based approach as one development course will get preference. CSOs can advocate for the implementation of international human rights treaties in the country. Previously, we were not able to have a Shadow report from Ethiopia because of a lack of organizations that can submit parallel reports to international bodies like the African Human Rights Commission or the UN Human Rights Treaty bodies. But now, we expect more organizations to come and working in this area.
- He also expects an increase in the number of organizations working in remote areas because, according to Mr Hailegebriel, a provision is included in the new law that allows government to exempt these organizations from the 20/80 requirement. Organizations that work in remote areas or in areas that the government is promoting will likely increase due the incentive provided by the exemption from the 20/80 requirement.

- He expects high interest from donors to support intervention relevant to sustained political reform such as peace building, dialogue, rule of law. This has already been evidenced in Ethiopia. Different donors have already shown interest in supporting initiatives to address current challenges facing the country.
- He expects high interest from donors to support intervention relevant to sustained political reform such as peace building, dialogue, rule of law. This has already been evidenced in Ethiopia. Different donors have already shown interest in supporting initiatives to address current challenges facing the country.
- He expects the development of legally recognized self-regulatory system in the civil society sector.
- He envisioned possible areas of intervention to be expanded to a wide range of matters. According to Mr Hailegebriel, the previous law undermined the role of CSOs on issues like parliamentary development. Now organizations can work in legislative oversight and the representational role of the government, like budget-tracking. The electoral system is also another area of interest. Other possible areas of CSO intervention include justice and human rights, particularly access to justice, peace building and conflict resolution, access to information, decentralization, local governance and urban or rural development, public administration reform and antic-corruption.

4 International Law on CSOs

Dr Nicky Broeckhoven presented on the international legal framework related to CSOs. In her presentation, she looked at how international law protects and sees CSOs and their roles in democratic societies. Why is it important to look at the international legal framework? Dr Broeckhoven stated that over the last few decades, international human rights law and institutions have increasingly recognized the rights and importance of CSOs. International human rights law has also recognized an urgent need for better and extensive protection of human rights defenders (for example, in the 1998 Declaration on Human Rights defenders).

The regulation of CSOs generally falls under the sovereignty of states at the national level. States have the freedom to regulate CSOs through its constitution, funding regulations, regulations about legal personality, and through specific CSO laws. However, the international level is implicated in the regulation of CSOs for two main reasons.

First, CSOs play an important role in advancing the realization of human rights norms. At the same time, CSOs depend on these norms for their continued existence, operation and flourishing. For that reason, CSOs have recourse to international human rights law in their advocacy work and in their efforts to ensure their own political and operational space. Thus, it is important to look at national regulation of CSOs in the light of the international legal framework.

Dr Broeckhoven noted that there are a number of core rights relevant to CSOs. These are the rights to freedom of expression, freedom of association and freedom of peaceful assembly. These rights are included in several international documents, such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and Declaration on Human Rights Defenders. These rights are seen as legal foundations on which the operation of CSOs is built. These rights are necessary for CSOs to have their own operational space and to guarantee an open and democratic society. Creating a safe and enabling environment for civil society is crucial for states if they want to meet their international human rights obligations and commitments.

She then took a closer look at some of these rights in a bit more detail. She categorized the rights applicable to CSOs into two sets of rights: substantive and procedural rights.

While international legal instruments guarantee the right of everyone to freedom of association, the right is not absolute. Within the international legal framework, derogations or exceptions to rights are possible, but only in limited circumstances. Such derogations or exceptions must be prescribed by law, they should serve a legitimate aim, and necessary in a democratic society. While the right to freedom of association is an individual right, it can only be meaningful if it is exercised in association with others. Under this right, formal and informal associations and registered and unregistered ones must be recognized.

Freedom of association is necessary for CSOs to be able to meet their objectives and carry out their activities. In addition, freedom of association protects the rights of CSOs to access resources and to seek, receive and spend their funding.

The next right Dr Broeckhoven discussed was the right to peaceful assembly. This right is important to CSOs as they must be free to hold peaceful meetings, demonstrations and other forms of gatherings. Connected to this is the right to freedom of expression which is crucial for the work of CSOs in relation to education, training, information dissemination, lobbying and advocacy, and decision making.

Dr Broeckhoven linked her discussion of human rights to sustainable development by pointing out the importance of the right to a healthy environment and the right to development. CSOs have played a crucial role in putting environmental issues on the international agenda and in monitoring and evaluating how international agreements about these issues are carried out. The right to development and the right to a healthy environment are closely connected to other human rights including the rights to life, food, health and water.

Next, Dr Broeckhoven gave a brief overview of the procedural rights relevant for CSOs. The right to information is crucial for CSOs and is an extension of

the right to freedom of expression. It is a fundamental right that is seen as a touchstone of all other internationally guaranteed freedoms. The right to information is a precondition for effective public participation and an important tool for enhancing government accountability and transparency.

This right of particular importance in an environmental context. The 1992 Rio Declaration on Environment and Development states that “at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities.” This provision is very important for CSOs working on matters related to the environment and sustainable development. In addition, she pointed to the right to participate in public affairs and in decision-making and the right to access to justice and effective remedies as crucial rights for the creation of an enabling environment for CSOs.

If we apply what is written in the international law back to the Ethiopian framework, it should be noted that the 2009 CSP has been heavily criticized at the international level by various international human rights bodies such as the Human Rights Committee and the Special Rapporteurs on Freedom of Association. Aspects of the law that have been criticized include the restrictions pertaining to the formation and registration, the types of activities that CSOs are allowed to engage in, and (direct or indirect) restrictions on funding.

Dr Broeckhoven noted that the philosophy of the new 2019 CSO law is based on the international legal framework, which is enshrined in the Ethiopian Constitution. The new law does away with the classification of CSOs and with this, no longer restricts funding. This is more in line with international law and the recognition that CSOs must be free to seek, receive and utilize their funds that come from any lawful source. Dr Broeckhoven found that there is better protection in the new law for freedom of association and it en-

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ronment that is held by
public authorities.*

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courages and facilitates collaboration between CSOs. The new law also seems to be based on the idea that CSOs are to be participants in democratic development and governance. Through a particular provision on operational freedom, included in the new law, CSOs, theoretically at least, can work on any matters as long as their activities are lawful. Dr Broeckhoven also pointed out that the new law guarantees a right to appeal against decisions of the CSO Agency. In concluding, Dr Broeckhoven emphasised that there is a solid international legal framework in place to facilitate, protect and promote an enabling environment for CSOs. However, this environment is increasingly compromised through the adoption of restrictive legislation at the national level. This phenomenon of shrinking space for civil society has been observed in many parts of the world. The 2009 CSP is one of those restrictive pieces of legislation and it was widely criticized for failing to comply with Ethiopia's commitments under its own constitution and under international law.

Ethiopia's new CSO law marks a shift to a contextually appropriate interpretation of the international legal framework. There are, however, still a number of issues for CSOs to follow up and to watch out for. International legal framework provides a key tool for CSOs when evaluating and monitoring further developments at a national level. The Human Rights Council, for example, said that states should ensure that all domestic legal provisions with an impact on CSOs comply with their international human rights obligations and commitments.

However, the presenter noted that there seems to be a degree of conflict between international human rights law and national law and regulation in relation to CSOs. International human rights law is very open to CSOs, recognizes their important roles and their need to be protected. National law, however, sees regulation as necessary because of dishonesty in the CSO sector.

While international human rights law does not offer perfect, universal answers but it does provide mini-

mum standards. With new regulations and guidelines for implementation still to be put in place, it could be interesting to keep the international legal framework in mind while we monitor and evaluate the new CSO law.

5

South African Law on CSOs

Dr Dina Townsend presented on South African civil society legislation. She began her presentation by asking why it might be useful or interesting to examine South African law and the experiences of South African CSOs in a project focused on Ethiopia. She identified three key reasons:

First, Ethiopian legislators have looked to and drawn on South African civil society legislation in the drafting of Ethiopian law. Ethiopian regulators referred to South African law both when drafting the 2009 CSP and when drafting Ethiopia's new civil society proclamation. Although the Ethiopian legislators had very different goals and ambitions with each of these pieces of legislation, in both cases the drafting was informed by South African law.

Second, South Africa's civil society law is sometimes described as one of the best examples of civil society regulation in the world. It is seen as effective, efficient, generous and designed to advance an open and vibrant civil society sector.

Third, in practice the law has not had the impacts that it was intended to have. South Africa shows us – possibly more than anywhere else – the limits of 'good' law. While Ethiopia has recently introduced progressive law on civil society, looking at the experience of South African CSOs reveals that good law is not enough. A lot more is needed to protect CSOs and to facilitate good CSO and state relationships.

The regulation of CSOs in South Africa is complicated. There are at least five different pieces of legislation that govern the establishment, work, funding or operations of CSOs, not including the Constitution and constitutional legislation (such as laws on access to information and rights to justice) that also have an impact on the activities of CSOs. For the purposes of this research, Dr Townsend focused on the key piece of legislation – the Nonprofit Organizations Act. Before discussing the Act, however, Dr Townsend stated that it is important to understand the history and context in which CSOs in South Africa operate. The apartheid government was largely intolerant of civil society and, at various points, banned long lists of organizations it viewed as antithetical to its policies and racist agenda.

A number of CSOs supported the apartheid government and these were funded and facilitated by the state. CSOs who opposed apartheid, however, were actively and aggressively suppressed by the government through regulatory controls, acts of state-sanctioned violence, the banning of organizations, and the arrest and detention of activists.

In the wake of the student protests in Soweto in 1976, international interest in and support for the anti-apartheid movement grew. With this came a growth in the funding for anti-apartheid CSOs. As many CSOs engaged in anti-apartheid activities were operating outside of the apartheid legal framework, international funders allowed these organizations significant freedom to use their funds as they saw fit. Funders imposed few constraints or reporting demands on anti-apartheid activist CSOs.

Dr Townsend noted that the transition to post-apartheid rule had something of an unexpected negative impact on the CSOs. With the end of apartheid, many CSOs suddenly faced major funding shortages as funders shifted their resources to the new government or to other jurisdictions where CSOs continued to face oppression and authoritarianism. South Africa was no longer seen a priority area for international funding.

Dr Townsend suggests that this also something to think about in the Ethiopian context. With changing political dynamics in the country, funder interests and priorities might also change. Funders looking to address problems in the realization of human rights might redirect funding if they think human rights problems are being addressed by the government.

While new regulation might introduce a more permissive and open environment for international funding, South Africa's transition reveals that this is no guarantee of continued international funding and support. A shortage of funding has been an ongoing problem for many CSOs working in South Africa. This has been exacerbated by the international financial collapse in 2008 and by South Africa's status as a middle-income country. International funders tend to prioritise lower income countries, expecting a growth in domestic sources of funding in middle-income states. However, in South Africa too little has been done to encourage local sources of funding meaning a funding gap has developed in the country. Dr Townsend pointed out that thinking about the role of donors is important, especially for countries in processes of political transition.

With the end of apartheid, the new South African government repealed the repressive apartheid laws governing CSOs and adopted new legislation. A number of key features of South Africa's regulatory framework are worth highlighting. First, in contrast to Ethiopian law, there is no requirement for an organization to register in order to operate as a CSO. CSOs can be registered in various different forms, but this registration is not a condition for the establishment of a CSO. Even large, multinational organizations can operate in South Africa without registration. This is because organizations can be established as voluntary associations. Voluntary associations only require the agreement of three people to be established - they do not need a constitution or any written documents. A voluntary association is a legal entity from the moment of agreement.

The voluntary association option has two crucial advantages. First, anyone can establish a CSO and this establishment cannot be interfered with by the state. In Ethiopia, in contrast, all CSOs have to be registered and this means they require the permission of the state to come into existence. Second, establishing a CSO can be very cheap. Voluntary associations are not obliged to file any paper work or employ the services of auditors or lawyers to assist in their establishment.

Dr Townsend pointed out that there are two key disadvantages to establishing oneself as a voluntary association, however. First, voluntary associations that are not formally registered often struggle to secure external funding. Many funders require or prefer registration. Second, voluntary associations are not subject to rigorous standards of accountability. With the exception of common law obligations to act in a reasonable way, there are limited mechanisms to ensure accountability and transparency by the managers and staff of voluntary associations.

Many CSOs in South Africa choose to be registered under the Nonprofit Organizations Act (the NPO Act). The NPO Act recognizes various kinds of CSOs, each

of which is subject to different standards and levels of regulation. These include non-profit organizations (NPOs), trusts and non-profit companies. While nonprofit companies are regulated by company law and have stricter obligations under law, NPOs face less scrutiny and oversight. In accommodating a variety of types of CSOs, the government has sought to strike a balance between self-regulation and state regulation. The NPO Act encourages a self-regulatory system for NPOs. While NPOs have a number of reporting and other statutory obligations, most of the day-to-day governance is left to the sector. A number of guidelines for self-regulation have been drawn up both by civil society bodies and by the Nonprofit Organizations Directorate, a state entity established to register NPOs. The Directorate has created a database of draft constitutions and a huge array of guidelines on governance and other matters, including how to engage communities and how to manage money. However, since there is no provision for the implementation of these guidelines under law, there is no state support for NPOs to assist with their implementation and a recent survey revealed that 83% of NPOs did not know that the guidelines existed.

One of the guidelines developed by the Directorate addresses expectations in regard to donor conduct. Included in the idea of self-regulation, is the idea that CSOs should have some say and input into the way in which donors conduct themselves and engage with CSOs. This idea, that civil society can set standards for funders, is a one that could and should be adopted in other jurisdictions, such as Ethiopia. Dr Townsend argued that this may be a critical part of ensuring the sustainability of organizations. Funders should be accountable to CSOs and to the civil society sector as a whole and should be transparent and honest in their funding approaches and decisions and the obligations they place on recipients. When thinking about CSO self-regulation, it is useful to think about how to include funders in that framework.

South Africa not only offers interesting experiences and lessons in regard to the regulation of CSOs, but it is also useful to look at the strategies that South African CSOs have adopted that have helped them in

advancing human rights and monitoring government. One of the ways CSOs have done this is through public interest litigation. While public interest litigation has been a very important component of civil society activism in South Africa, Ethiopian CSOs have had very limited recourse to courts in their work and advocacy. This might be because Ethiopia has not had strong activist, independent courts. A strong and independent judiciary can change what is possible for CSO activism and advocacy. Equally, a biased and politically compromised judiciary may limit avenues for activism and advancing human rights.

On the other hand, public interest litigation in South Africa has not always been translated in to effective change on the ground. Sometimes, the victory ends in the court. This suggests that public interest litigation is valuable and important for upholding constitutional rights but litigation is not an end in itself.

While South Africa offers a number of positive lessons for the regulation of CSOs, many organizations operate in difficult circumstances. While the NPO Act requires the state to support and advance the work of CSOs, the relationship between the state and many CSOs is fraught. For those doing service delivery work, that relationship has been mostly quite positive although CSOs have complained that government does not see them as partners. CSOs working on advocacy and who are vocally critical of government, however, find little support from the state, and often face threats and intimidation. Activists have reported that the government has been directly involved in violence against CSOs and in the murder of human rights activists, particular activists working on land rights and housing demands. Despite the strong regulatory framework, many CSOs find themselves operating in a volatile and violent context.

As discussed earlier, CSOs also face significant funding challenges. The two funding entities that were set up by the government have been inefficient and corrupt, and have failed to roll out funding to CSOs leaving many organizations in financial distress. One of them has only ever managed to handover 20% of its funds while the other has only handed over 15% of its funds.

These institutions lack the skills and competence to fulfill their mandates.

The significant problems of state intimidation and funding shortages that CSOs face reveal that good law is not enough. A thriving civil society sector also needs competent and sufficiently funded institutions to support CSOs. CSOs need to be able to operate free from violence and intimidation. In South Africa, the NPO Act has not been sufficient to secure these conditions.

6

Key findings of the research project

Dr Townsend described some of the key findings of the research project. A summary overview of findings and policy messages is attached in Annex.

Some policy messages for funders based on the research findings:

- First, there is a need to prioritize the operational space as well as the political space for CSOs. Second, the research identifies the problematic nature of the distinction between service delivery and advocacy work. Any funding is also expected to address this problematic distinction.
- Third, holistic funding approaches and long-term capacity building should be implemented in funding plans.
- Fourth, organizations face enormous delays in establishing and registering new projects and programmes. Funding programmes not only need to accommodate these delays, but funders and Northern CSOs should also include support programmes and initiatives that facilitate CSOs struggling to meet the administrative and reporting demands of the state. Since registration is still a requirement under the new CSO law (and in fact all organizations are required to reregister) this kind of support remains crucial.
- Fifth, the Dutch Ministry of Foreign Affairs efforts to create partnerships with northern and the southern CSOs has already had positive impacts on CSOs operating in Ethiopia. The Ministry should continue to encourage and invest in these partnerships, but might also consider extending these partnerships to include businesses and investors.
- Sixth, the home states of the CSOs are also required to prepare guidelines governing donors. This is supposed to be implemented in consideration of extending self-regulations and the obligations of CSOs. This is taken from the best practice of the Republic of South Africa.





Key reflections from the group

DISCUSSIONS AND PLENARY DISCUSSIONS

During the workshop, participants were provided with many opportunities to share and exchange ideas and thoughts, to ask questions to the research team, and to formulate remarks about the research project. While we cannot capture the detailed and impassioned debate of the two days, we have sought to identify key issues that came up during both plenary and group discussions.

1. RELEVANCE OF THE RESEARCH FINDINGS

Participants generally thought the research findings were relevant and important. However, some participants queried whether research that primarily assessed the status of CSOs under the old law is still relevant now that the law has been replaced by a more free and permissive regulatory regime. In a discussion of the relevance of the research the following points were raised:

- The importance and need to record the impact of the past law both as an historical record and to draw lessons for the future;
- The value of Ethiopian research for other countries;
The importance of recognizing the impacts of the 2009 law and the implications of this for the implementation of the new law;
- The comparative study of the South African CSOs law can offer important insight to the Ethiopian new CSOs law by explicating the limits of good law.

There was a general consensus that new law has brought several improvements. It has addressed different loopholes although it has showed interest to regulate and monitor the activity on the flow of funding within CSOs. However, some participants called for a level of caution when speculating about the new law. The new law, they said, cannot be evaluated by itself and needs to be examined together with its implementing regulations, which still need to be promulgated.

2. THOUGHTS ON THE NEW CSO PROCLAMATION

While Ethiopia has new and permissive law, for the promise of this law to be realized the following is needed:

- The Agency will continue to be the primary administrative body, overseeing CSO registration and operations. Up until now, the Agency has been under-resourced and under-capacitated. The Agency lacks the requisite organizational structure and capacity to deal with the diverse and complex CSOs sector. No basic change has been made in the new law regarding this. If this Agency is going to play a positive role in advancing CSO interests, winning CSO trust and effectively implementing the law, it requires essential capacity building supports like training and funding.
- Ethiopia has shifted to a partially self-regulatory system for CSOs. While many participants expressed support for self-regulation, some stated the inadequacy of self-regulation and the importance a reasonable degree of state oversight on CSOs.
- Under the new law, CSOs will be free to engage in a wide range of business, investment and profit-making activities to fund their organizational activities. This could be a valuable tool for securing alternative, sustainable funding as well as means of relationship building. For this to be an effective mechanism, CSOs need support in developing the necessary skills and expertise to engage in business activities. In fact, concern was raised by some participants that allowing CSOs to be involved in business activities without restriction could result in mission diversion.

3. PERCEPTIONS OF CSOS

One speaker noted that some CSOs are corrupt and their resources were also being used or consumed to maintain private needs of the administrative staff. Another speaker voiced his concern about the opening of unfettered political space for some CSOs since they may threaten the sovereignty of the country. He asked about controlling mechanisms that could be put in place for CSOs with destructive motives for acquiring excessive funding. Another participant didn't agree with the sweeping characterization of CSOs as 'consumers of money'. He stated that ethical CSOs have to be encouraged and acknowledged but those who abuse their positions have to be discouraged.

How are negative perceptions of CSOs to be changed? The participants suggested that it is necessary for there to be proper reporting on the role and achievements of CSOs. Their role has to be recognised as it is significant and much of the work at the grass roots level is done by CSOs. Beyond this, the role of CSOs at the federal level is also greater. The trust of the community should come first and recognition on their role should follow.

4. RELEVANCE OF INTERNATIONAL LAW TO CSOS

Participants agreed that international legal standards are useful as a minimum standard for CSO regulation, but that they need to be adapted to the local context. CSOs recognize that international law plays an important role in Ethiopian law and in the Constitution, and ought to play a bigger role in policies and implementation practice. International organizations should also play a bigger role in raising awareness about the important role of CSOs. A vibrant CSO sector requires knowledge of both local and international rights, laws and regulations.

The new 2019 CSO law is strongly informed by the African Human Rights Commission Guideline on Civil Society and the tools developed by the International Centre for Non-profit Law. This shows the value of international legal instruments in shaping domestic policy. These tools should also be used by CSOs in advocacy on implementation and in monitoring and evaluating the law.

Some participations stated that CSOs need to be more directly involved in and benefit from international environmental law, mechanisms and funds. For example, the government should cooperate with CSOs and provide funding to CSOs for projects under the Sustainable Development Goals and the Green Climate Fund.

5. A VIBRANT CSO SECTOR: WHAT IS NEEDED?

- During the discussions, one of the participants asked what it would take to have a vibrant CSO sector in Ethiopia. Some of key aspects raised by participants include:
- The need for awareness raising activities aimed at bringing attitudinal change of stakeholders; For CSOs to be vibrant, their positive contributions need to be acknowledged; their achievements need to be publicized/made public; they should receive proper acknowledgement of their work;
- There is a need for policies and strategies that boost CSOs to support existing legislation; There is a need to create a mechanism for greater CSO collaboration and the creation of partnerships – foreign/international CSOs with local CSOs. We need a platform for stakeholder collaboration;
- There could be greater involvement of international organizations in promoting local CSOs; There also need to be a proper mechanisms for ensuring CSO accountability.



Research Team

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Recommendations from the **WORKSHOP?**

1. GENERAL RECOMMENDATIONS

- a. CSOs want greater collaboration with government to build greater trust and to learn from government experience. CSOs suggested that the state should directly fund CSOs.
- b. Universities need to engage in demand-driven action research and establish platforms for ongoing engagement and collaboration with CSOs. A key aspect of this is trust-building between CSOs and academics (who are seen by some to be excessively skeptical of the CSO sector).
- c. CSOs need to do more to promote and make people aware of their successes and contributions. This will improve public trust in CSOs and establish their legitimacy.
- d. Universities can and should participate in capacity and trust building of both CSOs and the Agency, as well as other relevant partners. For example, the universities can offer training programmes on leadership, legal compliance, legal implementation, administrative law, business and tax, and others.
- e. CSOs are now in a period of transition and supporting them through this transition requires particular attention, funding and skills development. CSOs may have developed skills or organizational structures that are no longer useful under the new regime and may need to acquire skills or infrastructure to allow them to continue or reestablish themselves. They may face far greater competition for funds, changing donor and partner demands, and other challenges.

2. RECOMMENDATIONS FOR NORTHERN FUNDERS AND CSOS

1. Donors should do more to facilitate, encourage and require CSO-CSO cooperation, cooperation between CSOs and universities, and cooperation between CSOs and business leaders.
2. Donors should play a role, in collaboration with CSOs, to build capacity and competence in key institutions, in particular the Agency and the Council of CSOs. This could be done through training programmes in collaboration with the university.
3. Donors are perceived to prefer to support their existing partners and CSOs from their own country of origin. While sustained support for CSOs is important, there is also a need for increased support for local CSOs and young CSOs.
4. CSOs believe that grants are not always publically advertised, calls are distributed by word of mouth and awards are primarily given to known partners. More grants should be advertised publically and should not be limited to certain grantees. Donors need to be transparent in their decisions about distribution of funds and the basis for awards.
5. Under the new law, CSOs are free to engage in investment and other business activities to generate income. Donors should help build the capacity of CSOs to engage in business activities.
6. CSOs want more training and capacity building assistance, specifically in building the strength of CSO leaders.
7. Donors should help build awareness of CSO successes and contributions both in government and in the wider public.
8. Donors should facilitate CSOs and government in ensuring proper implementation of the new law.

Annex

Interim findings CSOs in sustainable

Development in Ethiopia, April 2019

In Ethiopia, civil society organizations (CSOs) have played an important role in advancing sustainable development by raising public awareness, developing their own capacity, and engaging with the state. However, these organizations have faced a number of legal, financial, social and other structural barriers that have limited their effectiveness and reach. In this research project, we explore how CSOs have advanced the sustainable development agenda in Ethiopia and examine the various obstacles they face. The aim of the research is to enhance scientific knowledge about the work, experiences and challenges faced by Ethiopian CSOs working in the environment and development sector and to explore how CSOs are helping to realize sustainable development in Ethiopia. The research aims to provide a better understanding of the work and activities of CSOs in supporting sustainable development by raising public awareness through the dissemination of research outputs and supporting the capacity building of CSOs, research institutes, organs of justice, and government officials. The following are the interim findings and policy messages from the project.

Interim findings:

- **Ethiopia is currently at a crossroads, which will impact on CSOs and sustainable development:** Over the past few months, the Ethiopian government has been working towards rapid reform in various areas, raising the hopes of many Ethiopians that the country is entering a new period of democratization and accountable governance. An important reform came at the beginning of this year with the adoption of Ethiopia's new civil society law, which replaces the current stringent regulatory framework for CSOs. While it is too early to know exactly what the impact of the law will be on civil society, the new legislation does appear to take significant strides towards the creation of an enabling environment for CSOs and better protection of the right to freedom of association and expression. The new law envisions a far greater role for self-regulation in the civil society sector but, worryingly, still maintains a high degree of state oversight through registration, reporting and funding allocation requirements. Although the regulatory environment for CSOs is improving, the sector is still in need of international support and ongoing, consistent and reliable funding.
- **Most of the organizations interviewed expressed support for the regulation of civil society to ensure transparency and accountability in the sector:** Most agreed, however, that the regulation of CSOs in Ethiopia since 2009 went too far, unnecessarily restricting CSO activities and intervening in funding and cost allocation. Many organizations identified a lack of strong self-regulatory mechanisms as a longstanding problem for them, which affects the effectiveness and public image of the CSO sector in Ethiopia. A better organized sector, with a greater degree of self-regulation, may discourage excessive or overzealous regulation by the state and improve the public image of the sector. The new law makes provision for a Council of Civil Society Organisations, empowered to enact a code of conduct for the sector, and this may address this need. However, questions remain about whether the new Council will be independent of state influence and able to represent the interests of diverse CSOs in a rapidly evolving sector.

- **Despite regulatory attempts to suppress CSO advocacy activities, some organizations have found innovative ways to do advocacy through service delivery:**

In Ethiopia, the state has sought to limit the political influence of foreign civil society organizations by only allowing them to engage in service delivery activities. The state has strictly defined service delivery as excluding advocacy and other types of political engagement. This has created many challenges for foreign-funded CSOs working on human rights issues. Nevertheless, some CSOs have managed to find innovative ways to blur the line between service delivery and advocacy work. Despite the recent law reform process, many organizations may still face obstacles when engaging in advocacy work as a result of government and public perceptions and expectations. Interviewed organizations representatives expressed the need for donors to assist in breaking down the idea that service delivery and advocacy are wholly separable activities by funding advocacy-through-service-delivery (or on the ground advocacy) and by recognizing the crucial connections between human rights, political activism and participation, and delivering basic services. This is particularly crucial in the field of sustainable development where new, innovative and sustainable approaches to development need to be demonstrated and integrated into community (and government) practice.

- **The Ethiopian government is not necessarily intolerant of civil society:** There is an assumption in the literature that the Ethiopian government is wholly intolerant of civil society. However, we found that the relationship between sustainable development CSOs and the Ethiopian government cannot be characterized so simply. CSOs report having good relationships with many sector administrators and line ministers of the government at various levels. However, they face many legal and bureaucratic challenges in their dealings with the Charities and Societies Agency and its regional counterparts. Given the ongoing role of the Agency under the new law, challenges of this sort are likely to remain to some extent. Organizations recognize the need for high levels of coordination in the sustainable development sector and, therefore, partnerships with local, regional and federal government entities are crucial. Strategic partnerships can improve cooperation, but more needs to be done to facilitate CSO networks and collective action: The Charities and Societies Proclamation 2009 has caused some CSO networks to shut down and others to shrink their activities. This has limited cooperation between CSOs and had a particularly devastating impact on sustainable development CSOs, some of which are unable to coordinate their activities or ensure that key environmental concerns are being addressed. Strategic partnerships are a valuable step towards achieving greater cooperation, but more needs to be done to facilitate CSO networks and collective action in the sustainable development sector. Innovative types of funding can help CSOs operate in circumstances of political constraint: Many advocacy and rights-based CSOs survived the funding crisis because of the European Union Civil Society Fund and the World Bank's Social Accountability Fund. Both these funding schemes are treated as domestic funds and are not subject to the 90:10 funding restriction placed on Ethiopian CSOs. These innovative types of funding could help CSOs operating under political constraints. Some organizations reported receiving 90% of their funds from these grants, however, and this can also make these organizations vulnerable. Changing funding priorities, which tend to follow the political interests of Western donors, have had additional adverse impacts on the stability of CSOs in Ethiopia: Ensuring sustainable development and addressing major environmental degradation requires long-term CSO engagement and funding. Interviewed organizations reported seeing almost no participation by the private sector in sustainable development initiatives and work: Interviews with trade unions revealed that international law and trade mechanisms have had a positive impact on the behaviour of private business towards employees. Similarly, international pressure might have a positive impact on the private sector's environmental practices. However, improving environmental practices needs to extend beyond traded goods to include infrastructure, land, agriculture, energy production and other domestic activities in Ethiopia. More needs to be done to highlight the role of private business and investors, and to facilitate engagement and cooperation between the private and CSOs sectors.

Policy messages:

- We recommend including the concept of ‘organizational space’, along with political space, in the Theory of Change (ToC) for Dialogue & Dissent. Our interviews suggest that CSOs see many of the constraints they face as affecting their organizational, rather than their political, space. The concept of political space is extremely widely defined in the ToC and encompasses many of the concerns raised, however, there are a number of reasons why narrowing political space and including organizational space might be preferable. First, interviewees did not see internal constraints (high staff turnover, poor management, demotivation) or donor-related funding constraints (shifts in donor priorities, limited duration funding) as strictly or primarily political. Hence, the notion of political space does not seem to ‘fit’. Second, in politically constrained environments, it is safer to engage the state and other CSOs around the concept of organizational space. For these reasons, we would suggest including a narrower definition of political space and adding the notion of organizational space. While these concepts may overlap, this may allow for a broader understanding and discussions of the ways in which the existence, operations and political activities of CSOs are limited. This is particularly important in this period of legal transition in which the political space might be opening, but the operational space of organizations might still be limited.
- The line between service delivery and advocacy work is not always a clear one. Funding that is strictly limited to only advocacy work and excludes any service delivery activities may hinder the work and progress of the beneficiary organizations. The Dutch Ministry of Foreign Affairs should support organizations attempting to do advocacy work through service delivery. This is still advocacy funding, but funding that recognizes that the service delivery/advocacy dichotomy is not always a useful or accurate one. This could be done by altering funding conditions to allow different kinds of approaches by CSOs. For example, funding for advocacy and policy-based work could be aligned with, or at least should not prohibit, service delivery activities. This could include on-the-ground advocacy or service-based advocacy. In addition, Northern CSOs that offer financial and/or non-financial support should also be sensitive to the overlap between different kinds of work and activities.
- Holistic approaches should be preferred over issue-based funding to ensure the sustainability of organizations and their activities. Funding strategies should be guided by the principles of programme sustainability and be aligned with the interests and priorities of the targeted beneficiaries. Long-term commitments to sustainable development should not be compromised by ever-changing donor priorities. This means valuing existing capacity and not just strengthening new capacity. It is also important to recognize the role of sustainable development programmes in ensuring other rights and political goals. For example, work on food stability (which includes sound land and water management) can also address external and internal migration and displacement.

Organizations face enormous delays in establishing and registering new projects and programmes. Funding programmes not only need to accommodate these delays, but funders and Northern CSOs should also include support programmes and initiatives that facilitate CSOs struggling to meet the administrative and reporting demands of the state. Since registration is still a requirement under the new CSO law (and in fact all organizations are required to reregister) this kind of support remains crucial.
- The Ministry of Foreign Affairs’ efforts to create partnerships with Northern and Southern CSOs has already had positive impacts on CSOs operating in Ethiopia. The Ministry should continue to encourage and invest in these partnerships, but might also consider extending these partnerships to include businesses and investors. Business has a significant role to play in advancing the role and wellbeing of CSOs, particularly in regard to sustainable development. The Ministry and Embassy should encourage or require Dutch businesses and investors to partner with CSOs and to demand the participation of CSOs, particularly in social and environmental impact assessment processes.

Knowledge products:

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