

Civil Society Alternative Draft Legislation on Registration and Operation of Civil Society/Non-governmental Organizations

NGO/CSO Legal Framework Consultative Taskforce¹

PRESENTED FOR PUBLIC DISCUSSION

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Table of Contents

PART ONE: GENERAL 4

 1. Short Title 4

 2. Definitions..... 5

 3. Scope of Application..... 5

PART TWO: ESTABLISHMENT AND REGISTRATION OF ORGANIZATIONS..... 6

 SECTION ONE: Establishment and Its Legal Effect 6

 4. Establishment..... 6

 5. Acquiring Legal Personality 6

 6. Organizations Established by Youth..... 6

 7. Organizations Established by Women 6

 SECTION TWO: Registration..... 6

 8. Requirement of Registration..... 6

 9. Application for Registration 7

 10. Grant of Registration..... 7

 11. Certificate of Registration..... 7

 12. Public Record of Registration..... 8

PART THREE: STRUCTURE AND GOVERNANCE..... 8

 SECTION ONE: Structure..... 8

 13. General..... 8

 14. Memorandum of Association..... 8

 15. Character of the Supreme Organ..... 8

 SECTION TWO: Membership Organizations..... 9

 Governance and Management..... 9

 16. General..... 9

 17. Governing Board..... 9

 18. Membership 9

 SECTION THREE: Non-membership Organization..... 9

 Governance and Management..... 9

 19. General..... 9

 20. Governing Board..... 10

 21. Founding Members 10

PART FOUR: REPORT AND SUPERVISION..... 10

 22. General..... 10

 23. Auditors and Accounts..... 11

 24. Reports 11

PART FIVE: DISSOLUTION AND LIQUIDATION	11
25. Principle	11
26. Competent Court	11
27. Suspension	11
28. Liquidation	12
PART SIX: FOREIGN ORGANIZATIONS	12
29. Applicable Law	12
30. Application for Registration	12
31. Type of Organization	12
32. International Organizations whose Head Office is situated in Ethiopia	13
PART SEVEN: MISCELLANEOUS PROVISIONS	13
SECTION ONE: Income Generating Activities and Tax	13
33. Permission of Income generating activities	13
34. Tax	13
SECTION TWO: Conversion and Amalgamation of Organizations	13
35. Merger	13
36. Split of Organizations	14
37. Conversion of a foreign organization into a local organization	14
38. Conversion of a regionally registered organization into a national organization	14
SECTION THREE: Appeal	15
39. Administrative Appeal to the Minister	15
40. Decision on the appeal	15
41. Appeal to Court	15
SECTION FOUR: Penalty Provisions	15
42. General	15
SECTION FIVE: Transitory Provisions	16
43. Organizations registered under the law in force now	16
44. Repealed Laws	16
45. Effective Date	16
Annex I: Explanatory Notes	17
1. Background	
2. Methodology	
Annex II: Relevant provisions of the Civil Code and the Commercial Code	

**A PROCLAMATION TO PROVIDE FOR
THE REGISTRATION AND OPERATION OF
CIVIL SOCIETY/NON-GOVERNMENTAL ORGANIZATIONS²**

**ALTERNATIVE DRAFT LEGISLATION
PREPARED BY THE CIVIL SOCIETY IN ETHIOPIA**

(WORKING DRAFT PREPARED FOR PUBLIC DISCUSSION ONLY)

Whereas it is necessary to create an enabling legal framework to ensure freedom of association which is guaranteed both by the federal constitution and international human rights conventions acceded to by Ethiopia and further to provide legal protection for organizations created in the exercise of the right to freedom of association;

Recognizing the role of such voluntarily established organizations in the over all development effort of the country and in particular considering the need to promote popular participation of civil society organizations in the country's development, governance and human rights advancement;

Whereas it is necessary to foster spirit of cooperation between voluntarily established organizations and public authorities at all levels of government for the common purpose of promoting development, democracy and rule of law;

Whereas it is necessary to coordinate and supervise the activities of civil society/non-governmental organizations

Now therefore, in accordance with Article 55 of the constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as “Registration and Operation of Civil Society/Non-governmental Organizations Proclamation No....”

² The title of a given proclamation indicates its purpose and scope. There are two views on the question of the scope of application of this proposed proclamation. One view holds that the law should be specific to NGOs where as the other view asserts that the law should use the more inclusive term CSOs in order to embrace associations/organizations with a wide variety of lawful purposes. The scope of application for this proposed legislation is provided under Articles 2 and 3.

2. Definitions

In this Proclamation

- 1) “Organization” means civil society organization; a not-for-profit, non-governmental and voluntarily set up legal institution which includes associations, charities, endowments, trusts and non-governmental organizations established for purposes including, but not limited to, development activities, provision of social and economic services, charity, environmental protection, research and advocacy, science and art, promotion of good governance and human rights.
- 2) “Minister” or “Ministry” means the Minister and Ministry of Justice respectively.
- 3) “Region” means the member states of the Federal Democratic Republic of Ethiopia as provided under Article 47 of the Constitution of the Federal Democratic Republic of Ethiopia. For the purposes of this Proclamation it also includes the city administrations of Addis Ababa and Dire Dawa.
- 4) “Memorandum of Association” means the document drawn up by founding members by which an organization is established and governed. It includes the articles of association (or statutes) which form an integral part of the memorandum of association.
- 5) “Person” means both natural person and legal persons that are endowed with legal personality.

3. Scope of Application

- 1) Without prejudice to Sub-Article (2) and (3) of this Article, this Proclamation shall be applicable to Organizations whose purpose is to operate in more than one region.
- 2) Until such time as regions issue relevant laws, organizations whose purpose is to operate only in one region shall be registered by the Regional Justice Bureaus in accordance with this Proclamation.
- 3) This Proclamation shall not apply on Trade Unions, Political Parties, Religious Institutions primarily devoted to religious worship, Co-operatives and other institutions formed with a view to defending the financial interests of their members.
- 4) Notwithstanding the provisions of this Proclamation, every person has the right to freedom of association for any lawful cause with out being registered. Therefore, this Proclamation shall apply only when persons who set up an organization seek legal recognition and registration for their organization.

PART TWO

ESTABLISHMENT AND REGISTRATION OF ORGANIZATIONS

SECTION ONE

Establishment and Its Legal Effect

4. Establishment

Any two or more persons have the right to form an organization in accordance with this Proclamation. This right equally applies to legal persons.

5. Acquiring Legal Personality

- 1) Any organization registered in accordance with this Proclamation shall acquire a legal personality. The provisions of Article 451 to 458 of the Civil Code shall be applicable in respect of rights and duties of the organization.³
- 2) Any organization shall in particular have the right to acquire both movable and immovable properties, to control and administer such property and to dispose or transfer such property for consideration or gratuitously.⁴

6. Organizations Established by Youth

In organizations established by youth who have not attained the age of majority, at least one half (1/2) of the governing board members shall be persons who have attained the age of majority.

7. Organizations Established by Women

Government shall provide special support and attention for organizations established by women so as to enable them to participate on the basis of equality with men in political, social and economic life.

SECTION TWO

Registration

8. Requirement of Registration

- 1) No organization shall carry on any activity other than those necessary to effect the establishment thereof unless and until it is registered and a certificate of registration has been issued in accordance with this Proclamation.
- 2) Any person acting on behalf of or in the name of an organization not so registered shall be jointly and severally liable with the organization for any such acts.

³ Provisions of the Civil Code referred to in this alternative legislation are annexed for an easy reference. (Annex II)

⁴ This sub-article may appear to be a digression in terms of the usual drafting technique because such a right is inherent in the principle provided under sub-article (1) which makes sub-article (2) redundant. However, based on practical limitations faced by CSOs, this sub-article seeks to emphasize the full rights of ownership.

9. Application for Registration

- 1) Any organization may be registered by submitting the following documents and information to the Ministry
 - a) Two (2) copies of the memorandum of association prepared in accordance with Article 14 of this Proclamation
 - b) The names, gender, date and place of birth, nationality, occupation and permanent address of the founders
 - c) Two (2) passport size photographs of each of the founders
- 2) The memorandum of association and the statement about the particulars of the founders shall be signed by all the founders.

10. Grant of Registration

- 1) The Ministry shall in all cases register and grant certificate of registration within thirty (30) days of the receipt of the application, except in cases where the intended purpose of the organization is unlawful or immoral.
- 2) If the Ministry has reasons to deny registration as per sub-article (1) of this Article or if the Ministry finds any defects in the application for registration which needs to be rectified, it shall advise to the founders in writing as to the reasons for denial or as to the relevant defects and such remedial measures in respect thereof.
- 3) If the certificate of registration is not issued or if the Ministry has not given written explanation within thirty (30) days as provided under sub-article (2) of this Article, the organization shall be considered to have been registered and the Ministry shall issue the certificate with no prior condition whatsoever.
- 4) There shall be no service charge for registering an organization.⁵

11. Certificate of Registration

- 1) The certificate of registration shall state the name of the organization, the date and number of registration, its validity period and a statement that the organization is granted legal personality in accordance with this Proclamation. It shall bear the seal and signature of the relevant official of the Ministry.
- 2) The certificate of registration shall be valid for the period an organization is established for, as provided in the memorandum of association. If an organization is established for an indefinite period of time, the certificate of registration shall accordingly be valid for an indefinite period of time.
- 3) The certificate of registration shall at all times be prominently displayed at the head office of the organization.
- 4) The certificate of registration shall be returned to the Ministry if the organization is dissolved for any reason. The organization shall also notify the Ministry the loss or destruction of the certificate of registration.

⁵ Service charges may appear to be acceptable for a range of public services. However, this sub-article seeks to emphasize a major principle that exercise of fundamental human rights and the respective duty of the government to recognize the exercise of such fundamental human rights should not be subject to any form of payment.

12. Public Record of Registration

- 1) The Ministry shall keep a public record of all registered organizations which includes such information as provided under Article 472 of the Civil Code.
- 2) Such information shall always be open to the public in working hours of the Ministry and any person may seek and obtain, free of charge, a written statement of such information appearing in the public record.

PART THREE

STRUCTURE AND GOVERNANCE

SECTION ONE

Structure

13. General

- 1) An organization may be established as a membership or a non-membership organization and this shall be clearly stated in the memorandum of association.
- 2) Without prejudice to the mandatory provisions of this Proclamation, the structure and governance of an organization shall be determined as provided in its memorandum of association.

14. Memorandum of Association

- 1) The memorandum of association shall include, but not limited to, the following information
 - a) Name of the organization
 - b) The objectives of the organization
 - c) The structure and governance of the organization.
 - d) The requirements and duties of membership for membership organizations
 - e) The period for which the organization is established
 - f) The manner in which the memorandum of association may be amended
- 2) The provisions of the memorandum of association shall be supplemented or superseded by this Proclamation and relevant provisions of the Civil Code, whenever the memorandum is silent or any of its provisions are contrary to the law.

15. Character of the Supreme Organ

- 1) In a membership organization, the general meeting of members shall be the supreme organ of the organization.
- 2) In a non-membership organization, the supreme authority of the organization shall be vested in a governing board.

SECTION TWO

Membership Organizations

Governance and Management

16. General

- 1) The general meeting of members is the supreme organ of the organization. The provisions of Article 436 to 450 of the Civil Code shall be applicable.
- 2) Without prejudice to the powers and functions reserved by law to the general meeting, an organization may have a governing board and an executive (management) organ.
- 3) Where the organization has a governing board and an executive (management) organ; the powers, functions and responsibilities of such organs shall be provided in the memorandum of association.
- 4) If the memorandum of association is silent about the management of an organization, the provisions of Article 426 to 435 of the Civil Code shall apply, *mutatis mutandis*, in respect of the management of the organization.

17. Governing Board

- 1) Whenever the organization has a governing board, its members shall be elected by and be accountable to the general meeting.
- 2) The memorandum of association shall provide the manner in which the governing board members are to be elected.
- 3) The members of the governing board shall be liable to the organization in accordance with the rules relating to agency. (Articles 2179 to 2233 of the Civil Code shall apply *mutatis mutandis*.)

18. Membership

- 1) The provisions of Article 415 to 425 of the Civil Code shall apply in respect of members of an organization.
- 2) An organization established by less than 10 founding members, shall raise its membership at least to 10 members within one year of its establishment.

SECTION THREE

Non-membership Organization

Governance and Management

19. General

- 1) The supreme authority of the organization shall be vested in a governing board which shall have not less than five members
- 2) Up to one half (1/2) of the governing board members may be elected from among the founding members.

- 3) Without prejudice to the powers and functions reserved to the supreme organ, the organization may have a Council of the founding members and an executive (management) organ.
- 4) Where the organization has a council of founding members and an executive (management) organ, the powers, functions and responsibilities of such organs shall be provided in the Memorandum of Association.
- 5) If the Memorandum of Association is silent about the management of an organization, the provisions of Article 426 to 435 of the Civil Code shall apply, *mutatis mutandis*, in respect of the management of the organization.

20. Governing Board

- 1) The governing board in a non-membership organization is the supreme organ of the organization. The provisions of Article 436 to 450 of the Civil Code shall apply, *mutatis mutandis*, in respect of the powers of the governing board as a supreme organ of the organization.
- 2) The Memorandum of Association shall provide the manner in which the governing board members are to be elected.
- 3) The members of the governing board shall be liable to the Organization in accordance with the rules relating to agency. (Articles 2179 to 2233 of the Civil Code shall apply *mutatis mutandis*.)

21. Founding Members

- 1) Notwithstanding any provision to the contrary in the Memorandum of Association, the capacity of being a founding member is inalienable and can not pass to the heirs.
- 2) Notwithstanding any provision to the contrary in the Memorandum of Association, a founding member may at any time withdraw from the Organization. A founding member who withdraws shall pay any subscriptions that have fallen due.
- 3) In accordance with the Memorandum of Association, the founding members may suspend a member, subject to a final expulsion decision by the governing board.
- 4) The founding members shall not be liable to third parties as a consequence of the activities of the Organization.

PART FOUR

REPORT AND SUPERVISION

22. General

- 1) The Ministry shall supervise the activities of organizations in accordance with this Proclamation and other relevant laws.
- 2) The provisions of Article 468 to 479 of the Civil Code shall apply, *mutatis mutandis*, in respect of the supervision of organizations.

23. Auditors and Accounts

- 1) Every organization shall keep proper books of accounts in accordance with the generally accepted accounting principles.
- 2) Any organization whose projected annual revenue exceeds Ethiopian Birr 100,000. (One hundred thousand Ethiopian Birr) shall have a registered external auditor(s) appointed by the supreme organ of the organization. Such auditor(s) shall not be member(s) of the organization.
- 3) The provisions of Article 374 to 376 of the Commercial Code shall apply, *mutatis mutandis*, in respect of the powers and duties of such auditor(s). The auditor(s) report shall be approved by the supreme organ of the organization.

24. Reports

- 1) Every organization shall submit to the Ministry its annual financial and activity report as approved by the supreme organ of the organization. Such annual report shall be submitted not later than three months after the end of the preceding financial year.
- 2) If the Ministry has sufficient grounds casting doubt as to the authenticity of such reports, it may order a re-examination of the accounts by another registered external auditor.

PART FIVE

DISSOLUTION AND LIQUIDATION

25. Principle

- 1) Any organization may only be dissolved:
 - a) By not less than a $\frac{3}{4}$ majority decision of its supreme organ as may be provided in its memorandum of association.
 - b) By a court decision in accordance with this Proclamation.
- 2) The Ministry or the governing board or more than $\frac{1}{2}$ (one half) of the members of the organization can apply to court requesting a decision for dissolution of any organization.

26. Competent Court

- 1) The jurisdiction to decide on dissolution of any organization shall be the federal high court.
- 2) The decision of the federal high court is subject to appeal to the federal Supreme Court.

27. Suspension

- 1) The court may order the suspension of the activities of an organization pending a final decision on its dissolution.
- 2) The court shall always hear the organization prior to issuing such an order and it shall also take into account the interest of third parties who may be affected by such order.

- 3) A suspension order is subject to appeal to the federal Supreme Court.

28. Liquidation

The provisions of Article 463 to 467 of the Civil Code shall apply in respect of the liquidation of an organization.

PART SIX

FOREIGN ORGANIZATIONS

29. Applicable Law

- 1) Without prejudice to the provisions of this Proclamation, the provisions of Article 545 to 549 of the Civil Code shall be applicable, *mutatis mutandis*, in respect of foreign organizations who wish to carry on activities in Ethiopia.
- 2) Foreign organizations which have been granted certificate of registration shall be fully assimilated as regards the enjoyment and exercise of rights and responsibilities to organizations established in Ethiopia in accordance with this Proclamation.

30. Application for Registration

- 1) Foreign organizations who wish to undertake activities in Ethiopia, can apply for registration by submitting the following documents and information to the Ministry:
 - a) Certificate of registration issued by authorized agency from its country of origin
 - b) Resolution by the competent organ of the organization to undertake activities in Ethiopia
 - c) The governing documents of the organization
 - d) A power of attorney given to the person representing the organization in Ethiopia.
- 2) Whenever the representative in Ethiopia is changed, the organization shall inform the Ministry in writing.

31. Type of Organization

- 1) The organization that wishes to undertake activities in Ethiopia may be constituted either as a branch of the parent organization or as a subsidiary (affiliate) having its own legal personality.
- 2) If a foreign organization wishes to be constituted as a subsidiary (affiliate), in addition to the requirement of Article 30 of this Proclamation, the following shall be applicable in respect of its registration in Ethiopia:
 - a) The subsidiary (affiliate) in Ethiopia shall have a governing board which shall have not less than five members and shall be the supreme organ for the subsidiary (affiliate) in Ethiopia
 - b) The subsidiary shall have a statutes by which it is governed

32. International Organizations whose Head Office is situated in Ethiopia

- 1) International organizations who wish to situate their head office in Ethiopia may be constituted in accordance with a Head Quarters agreement to be entered in to with the Ministry of Foreign Affairs.
- 2) Privileges and immunities to be given to such international organizations shall be determined by the head quarters agreement.
- 3) The Ministry of Foreign Affairs may issue regulations or guidelines in respect of the constitution and operation of such international organizations.

PART SEVEN

MISCELLANEOUS PROVISIONS

SECTION ONE

Income Generating Activities and Tax

33. Permission of Income generating activities

- 1) Any organization may undertake income generating economic activities in addition to resources it mobilizes in a form of aid funding.
- 2) When the said income generating economic activity requires a separate trade or professional license, the organization shall have such trade or professional license.
- 3) The organization may either directly carry on an income generating activity or undertake such income generating activity through a subsidiary (affiliate) established for this purpose.
- 4) Any and all revenues derived from income generating activities shall solely be used to finance the objectives of the organization and it shall under no circumstance be paid or divided among the members.

34. Tax

Tax benefits and tax deductibility of donations to organizations shall be determined by other relevant laws.

SECTION TWO

Conversion and Amalgamation of Organizations

35. Merger

- 1) Any two or more organizations may merge in accordance with the decision by the supreme organs of the organizations. Such an amalgamation may either be a merger by take over or a merger by forming a new organization.

- 2) The rights and duties of the merged organizations shall be transferred to the newly established organization or to the organization taking over.
- 3) The deed of merger together with the decisions of the supreme organs of the organizations shall be submitted to the Ministry for approval.
- 4) The Ministry shall publish a public notice of the merger and ensure that the right of third parties is duly protected before approving the merger.
- 5) The merger shall be considered complete when it is approved by the Ministry. The certificate of registration of the organization that ceases to exist shall be returned to the Ministry.

36. Split of Organizations

- 1) Any organization may split in to two or more organizations in accordance with the decision of the supreme organ of the organization.
- 2) The terms of the split together with the decisions of the supreme organs of the organizations and the Memorandum of Association for the newly established organization shall be submitted to the Ministry for approval.
- 3) The division of rights between the newly established organization(s) and the parent organization shall be determined by the supreme organ of the organization. However, both the newly established organization and the parent organization shall have a joint and several liabilities in respect of obligation to third parties.

37. Conversion of a foreign organization into a local organization

- 1) A foreign organization which operates in Ethiopia may be converted into a local organization in accordance with the decision of the competent organ of the organization.
- 2) The terms of the conversion together with the Memorandum of Association for the converted local organization shall be submitted to the Ministry for approval.
- 3) When the conversion is approved by the Ministry, the certificate of registration issued to the foreign organization shall be returned and all its rights and duties shall be transferred to the converted local organization.

38. Conversion of a regionally registered organization into a national organization

- 1) An organization which is registered at a region level may be converted into a national level organization in accordance with the decision of its supreme organ.
- 2) Any organization that wishes such a conversion may apply to the Ministry by submitting the decision of its supreme organ and the amended memorandum of association.
- 3) When such a converted organization is registered by the Ministry, the certificate of registration that was issued by regional authorities shall be returned.

SECTION THREE

Appeal

39. Administrative Appeal to the Minister

- 1) Any denial of registration under Article 10 hereof or any decision of the Ministry in respect of supervision is subject to appeal to the Minister by any person affected by the decision within sixty (60) days of the receipt of such denial or order.
- 2) Where the decision of the Ministry is not given in writing, the appeal can be made at any time.

40. Decision on the appeal

- 1) The Minister shall in every case hold a hearing before him/her and he/she may thereupon summarily reverse such denial or order or he/she may amend or approve the decision.
- 2) The Minister shall in every case prepare and give a written decision which recite the nature of the question under consideration and the reasons for the decision he/she makes.
- 3) The Minister shall in every case render his/her decision within sixty (60) days after the receipt of the appeal.

41. Appeal to Court

- 1) Every decision of the Minister under Article 40 hereof shall be subject to appeal to the Federal High Court within sixty (60) days after the receipt of the Minister's decision.
- 2) Where the decision of the Minister is not given in writing, the appeal can be made at any time.
- 3) The decision of the federal high court is subject to appeal to the federal Supreme Court.

SECTION FOUR

Penalty Provisions

42. General

- 1) Without prejudice to the provisions of the penal code, any person who contravenes the mandatory provisions of this Proclamation shall be liable to a fine not exceeding Ethiopian Birr 5,000. (five thousand Ethiopian Birr)
- 2) Notwithstanding this provision, the court may, having regard to the circumstances of the case, release the offender on reprimand.

SECTION FIVE

Transitory Provisions

43. Organizations registered under the law in force now

- 1) All organizations which are registered under the law in force now, shall be considered to have been registered under this Proclamation as of the effective date of this Proclamation.
- 2) The current certificate of registration of said organizations shall be replaced by a certificate of registration to be issued in conformity with this Proclamation. The Ministry shall accomplish this within six months after the effective date of this Proclamation

44. Repealed Laws

- 1) Associations Registration Regulation No. 321/1966 is hereby repealed.
- 2) Articles 409(3), 411(2), 461, 462, 467(3), 480, 481 and 482 are hereby repealed.
- 3) No laws, regulations, directives or decisions shall, in so far as it is inconsistent with this Proclamation, have force and effect in respect of matters provided for in this Proclamation

45. Effective Date

This Proclamation shall enter into force on the date of its publication in *Federal Negarit Gazeta*.

Done at Addis Ababa on thisday of2004

Annex I

Explanatory Notes

1. Background

The NGO/CSO community in Ethiopia has long called for the adoption of a comprehensive and enabling legal framework that governs the formation and operation of NGOs/CSOs. Since some four years back, the federal Ministry of Justice (MoJ) issued a series of draft legislation on the subject, the most recent one being the draft issued by the Ministry in June 2004. The NGO/CSO community observed that the MoJ draft legislation fails to be an enabling and democratic legal framework. The MoJ draft is rather disabling, inconsistent with constitutional provisions, overly regulatory, highly intrusive and opening a wide door for abuse and harassment.

The NGO/CSO community has decided to present this alternative draft legislation for public discussion. We believe this alternative draft legislation reflects the fair balance between regulation for the protection of public interest and the respect for the autonomous associational life of people and creates an enabling and democratic legal framework that facilitates the work of NGOs/CSOs.

We believe that freedom of association and freedom of expression are the hallmarks of an open and democratic society and hence the legal framework for NGOs/CSOs must recognize and guarantee the right of individuals to freely join together to pursue shared interests. State interference on the exercise of such a fundamental right should be kept at a minimum and in all cases should not compromise the autonomy and independence of people's associational life. The alternative draft legislation seeks to protect the freedom to form and operate independent civic groups while also making sure the public is protected from possible abuses. Care is taken to ensure that regulatory burdens imposed by the law balances the rights of individuals to freely exercise their freedom of association and the need for the protection of the public from possible abuses. Such are some of the basic principles that underpin the alternative draft legislation.

This alternative draft legislation is only a working document presented for public discussion. Please address your comments and queries to the address given on the front page.

2. Methodology

There are two most important elements of the methodology used to develop this alternative draft legislation. The first one is a series of formal and informal consultations with NGO/CSO members and leaders, lawyers, finance experts, state officials and other well placed observers. The second element of the methodology is studying similar and relevant laws of countries from all

over the globe but most notably from countries having long and uninterrupted experience with civic organizations. There has not been any attempt to wholly adopt the laws and systems of any one country but rather the authors have taken due care to reflect on the local circumstances of Ethiopia and made conscious effort to make this alternative draft relevant to the country.

The authors of this alternative draft bill have sought to make it as simple and accessible as possible. The alternative draft legislation seeks to address key issues affecting civil society organizations. Issues that are sufficiently covered by existing laws are only referenced as being applicable *mutatis mutandis*. This is in line with generally accepted legal drafting techniques as opposed to reproducing provisions of existing laws in every new law.

The drafting team members combine range of relevant expertise and experience including; legal, development and social studies and practices. They are long standing active members and leaders in the NGO/ CSO sector. The resumes of each of the drafting team members are too long and not highly relevant to describe here but they are all publicly available up on request.

Annex II

Relevant Provisions of the Civil and Commercial Code⁶

⁶ Provisions of the Ethiopian Civil Code and Commercial Code which are referred to in this alternative draft legislation are annexed herewith for an easy reference.