

**COMMENTARY  
And  
OBSERVATIONS**

**On the current - latest NGO/CSO Draft  
Legislation prepared by Ministry of  
Justice,  
June 2004**

**Bekure Herouy  
Legal Consultant  
June 2004**

## **Introduction**

It is to be recalled that in May 2004, I had submitted an Activity Report on NGO/CSO Draft Legislation outlining the deliberations of the Task-Group and the progress made in developing the draft proclamation by giving an article-by-article account that attempted to graphically and comprehensively describe and record what transpired during the successive meetings held by the TG.

This report is a follow up of the aforementioned report offering a commentary and/or observation on the draft prepared by the Ministry of Justice and submitted for our consideration and observation in June 2004.

Like the previous report, this report also will indicate article-by-article, which agreements and/or understandings have been brought on board and which have been left unattended to without any change.

In this report cross-reference will be made to the detailed May report for further clarification on detailed and pertinent issues. Therefore this report should be read in tandem with the May report.

What this report sets out to do is simply indicate areas of convergence and divergence so as to easily and readily identify issues that need to be further taken up and addressed. And by way of conclusion I will indicate the major areas of difference and the critical issues that need to be taken up and addressed further.

## **Title**

Our suggestion and recommendation to use of the more embracive term "Association" in the title of the legislation has not been brought on board on the other hand the suggestion and recommendation of citing the purpose of the legislation in the title has been brought on board and accordingly the proclamation has been issued "to regulate the registration and operation" (of "NGOs" MOJ version), ("Associations" our version).

## **Preamble**

The suggestion and recommendation of incorporating the spirit and letter of article of article 31 of the constitution of the FDRE dealing with Freedom of Association which states that every person has the right to Freedom of Association for any cause or purpose, in the first paragraph of the preamble has been adopted and brought on board. So has the suggestion and recommendation of stating in the preamble that the proclamation has been issued taking into account and consideration the special characteristics of associations thus calling for a special and separate legislation.

However more importantly our suggestion and recommendation to also state in the preamble that this proclamation has been enacted to enable citizens to exercise this basic constitutional right has not been brought on board.

## **Article 1**

### **Short Title**

Our suggestion and recommendation of having the term "Association" as opposed to "NGO" in the title of the proclamation has not been brought on board.

## **Article 2**

### **Definition**

With regards to article 2(1) definition of "Association" our suggestion and recommendation on this sub-article has not been taken into account and has not been incorporated in the draft. (See page 3)

## **Article 3**

### **Scope of Application**

Our recommendation and suggestion has been brought on board. Accordingly this proclamation applies to those associations that have the intention of operating in more than one regional state. (See page 3-4)

## **Article 4**

### **Establishment**

Our suggestion and recommendation to sticking to the five person requirement for establishing an association and enlarging the areas in which associations may operate has been brought on board. However our suggestion to add promotion and advancement of science, technology, art, culture, human rights, environmental protection etc..and the addition of the phrase "of a similar nature" at the end of the sub-article to indicate that the list is not exhaustive but only illustrative has not been brought on board. (See page 4-5).

## **Article 5**

### **Memorandum of Organization**

Our suggestion and recommendation on this provision has not been brought on board. (See page 5).

## **Article 6**

### **Registration Process**

Points that we had indicated that should be considered in redrafting this provision have not been taken to consideration nor has our strong reservation and opposition to the sub-article that states where the request for registration is rejected by the Ministry, properties owned by the organization to be established shall be transferred to the government or an organ designated by the Ministry has not been taken into consideration. (See page 5-6)

## **Article 7**

### **Application**

Points that we had indicated that should be considered in redrafting this provision have not been taken into consideration at all. (See page 5-6)

## **Article 8**

### **Recommendation**

Our suggestion and recommendation for clearly redrafting this provision have not been taken into account and consideration at all. Particularly our recommendation that there should be a clear stipulation that it does not violate, inhibit or limit constitutional right of citizens to establish association by delaying the registration processes and using a wording that guarantees this has been completely ignored, so has our recommendations if this provision is to stay as is, to put a time limit and state that there is no need to give additional time for request for recommendation. (See page 7)

## **Article 9**

### **Certificate of Registration**

With regards to article 9 (2) (b) which contains terms such as "National Security", "Public Interest" and "National Unity" we had suggested that in order to avoid confusion such terms should be interpreted and applied inline with international human rights conventions and the constitution of the FDRE and accordingly we had recommended that these terms be replaced by " activities that violates the constitution" to make it clear that it is only activities that are in variance with the constitution and the constitutional order that could warrant rejection for registration of an association and not lose and undefined terms such as "National security", "public interest" and "national unity". However our suggestion and recommendation has not been taken into consideration. (See page 8-9)

## **Article 10**

### **Renewal of Registration Certificate**

Our suggestion and recommendation that there is no need for associations to renew their registration every three year so long as they continue to operate in accordance with the proclamation and other relevant laws and our observation that such a procedure would create an unnecessary bureaucratic burden on the Ministry's registration office has not been taken into consideration. (See page 9)

## **Article 11- Merger**

**And**

### **Article 12 -Division**

Our suggestion for redrafting these two provisions has been taken into consideration and accordingly it has been made clear that it is the highest organ of an association that has the power to decide on the issue of Merger or Division of an association. (See page 10-11)

## **Article 13 - Conversion of Foreign Organization Into local Organization**

**And**

### **Article 14 - Conversion of organization registered by a Region into National organization**

Our suggestion, which was purely of a drafting and not substantive nature, has not been taken into consideration. (See page 10-11)

## **Article 15**

### **Membership**

Our suggestion and recommendation to state in this provision that membership should not be discriminatory has been brought on board. (See page 11)

## **Article 16**

### **Right of Members**

Our suggestions which was purely of a drafting and not substantive nature has not been taken into consideration. (See page 11-12)

## **Article 17**

### **Duties of Members**

Our suggestion, which was of a drafting rather than of substantive nature, has not been taken into consideration. (See page 12)

## **Article 18**

### **Termination of Membership**

There is no substantive issue of difference on this provision.

## **Article 19**

### **Structure of an organization**

There is no substantive issue of difference on this provision.

## **Article 20**

### **Powers and Duties of a General Assembly**

There is no substantive issue of difference on this provision.

## **Article 21**

### **Dissent of the Resolution of the General Assembly**

Our suggestion and recommendation to put a check on the unqualified judicial recourse of a member who challenges the decision of his association's highest decision-making body has not been taken into consideration. (See page 13-14)

## **Article 22**

### **Meetings**

Our suggestions and recommendation, which was purely of a drafting rather than substantive issue has not been taken into consideration.

## **Article 23**

### **Agreement in writing**

There is no major difference on this provision.

## **Article 24**

### **Power and Duties of the Executive Committee**

Our suggestion and recommendation on this provision has been fully taken on board. (See page 15-16)

## **Article 25**

### **Term of Office of the Committee**

There is no difference on this provision.

## **Article 26**

### **Members of the Executive Committee**

There is no difference on this provision.

## **Article 27**

### **Suspension of Voting Rights**

There is no difference on this provision.

## **Article 28**

### **Powers and Duties of the Manager**

Our suggestion to add a new sub-article that limits acts of the manager and impose a restriction on the issue of sale, transfer, pledge or mortgage of all immovable properties of the association has not been taken into consideration. (See page 17)

## **Note (The former provision which was Article 29**

### **Transitional Period until the Admission of new Member has been deleted)**

This provision has been deleted from the draft. We are in favor of this approach because the provision as it stood posed a lot of problems because it lacked clarity and would have caused a lot of confusion. In order to avoid confusion it is better to delete it from the draft.

## **Article 29 - Structure**

**And**

## **Article 30 - Powers and Duties of the Board**

There is no difference on these provisions.

## **Article 31**

### **Board Member**

Noting that the drafting needs to be improved, there is no difference on this provision.

## **Note (The former Provision which was Article 32**

### **Rights and Obligations of the Organization has been deleted)**

This provision has been deleted from the draft. We are in favor of this approach because the provision as it stood posed a lot of problems because it lacked clarity and would have caused a lot of confusion. In order to avoid confusion it is better to delete it from the draft.

## **Article 32**

### **Powers of the Manager**

There is no difference on this provision. It has been stated that the provision of article 28 shall also apply to article 32. Article 28 deals with powers and duties of the Manager. We are in favor of this approach because from legal drafting point of view it makes sense.

## **Article 33**

### **Foreign Organizations**

Our suggestion and recommendation regarding article 33(3) to redraft this sub-article in clear language stating that Ethiopian law shall apply to foreign organizations registered in Ethiopia has not been taken into consideration. (See page 19)

## **Article 34**

### **Management of a Foreign Organization**

Our recommendation in article 34(2) (c) to redraft the sub-article stating that Ethiopian law shall govern the management of foreign organization has been brought on board as per our recommendation.

## **Note (The former provision which was Article 36**

### **Relationship with local Organizations has been deleted)**

Our suggestion and recommendation to delete this provision from the draft because as it stands it can easily be construed as imposing a legal obligation on foreign NGO, i.e. the obligation to build the capacity of local NGOs, has been taken into consideration and the said provision has been deleted from the draft. (See page 20)

## **Article 35**

### **Rights and Obligations**

There is no difference on this provision.

## **Article 36**

### **Name**

There is no difference on this provision.

## **Article 37**

### **Capacity**

There is no difference on this provision.

## **Article 38**

### **Extra-Contractual Liability**

There is no difference on this provision.

## **Article 39**

### **Property of the Organization**

There is no difference on this provision.

## **Article 40**

### **Powers and Duties of the Ministry**

With regards to article 40 (1) our suggestion and recommendation to add that the details of "follow up" and "supervision" by the Ministry will be worked out and outlined in a directive or regulation to be issued simultaneously with this proclamation has been brought on board as per our suggestion and recommendation. (See page 23(c) and (d)).

Also our suggestion and recommendation to delete the phrase "take necessary measures" from sub-article because it has a negative and ominous connotation has been taken into consideration and the phrase has been deleted from the sub-article. (See page 24 (e))

With regards to article 40 (2) our suggestion and recommendation to add a new sub-article that states apart from "follow up" and "supervision", the MOJ has also an advisory role and has the duty and responsibility of proactively assisting NGOs or associations in exercising freedom of association has been brought on board as per our suggestion and recommendation. (See page 24-25)

With regards to article 40 (3) our strong and persistent suggestion and recommendation that this sub-article should contain the basic legal principle of "sufficient and probable cause" the Amharic version reading «በቁና አሳማኝ ምክንያት ሲኖረው» has not been taken into account and consideration and is not to be found in this sub-article. (See page 24 (f))

Our suggestion and recommendation to clearly state in the sub-article that it is only when there is sufficient and probable cause to suspect that an illegal activity is taking place, that sudden audit of the accounts of NGO or association will be conducted by the MOJ and even in this case due process of law should be observed has not been taken into consideration. (See page 24 (g))

Our suggestion and recommendation that with regards to the MOJ suspending bank account of NGOs or associations, the principle of sufficient and probable cause should also equally apply here has not been taken into consideration. (See page 24 (h))

Our suggestion that there should be a time limit for suspending the bank account of an NGO or association has been taken into consideration and accordingly as per our recommendation a two-months time limit has been put in the sub-article. (See page 24 (i))

However our strong and persistent suggestion and recommendation that after suspending the MOJ should take the case to the court and get a judicial decision to suspend the bank account, the Amharic version reading «አግዶ በተወሰነ ጊዜ ፍርድ ቤት አቅርቦ ያስወስናል::» has not been taken into consideration and is not to be found in the sub-article. (See page 24 (i))

On the contrary the sub-article has shifted the responsibility of appealing the decision on suspension on the NGO or association whose bank account has been suspended. The Amharic version reading «የባንክ ሂሳብ የታገደበት ድርጅት ይኸው ትዕዛዝ እንዲነሳለት ለፌዴራሉ ከፍተኛ ፍርድ ቤት ይግባኝ መጠየቅ ይችላል::»

When compared to the previous draft, the inclusion and/or recognition in the draft proclamation of judicial appeal on the administrative decision of MOJ, is relatively a marked improvement for this basic legal concept did not exist in the previous draft.

Nevertheless this by itself does not meet our suggestion and recommendation and therefore remains to be a fundamental and irreconcilable area of difference.

With regards to article 40 (5) as per our suggestion and recommendation the phrase "where there is doubt in the operation or activity of an NGO" has been retained in the sub-article. Therefore there is no difference in this sub-article. (See page 24(j))

The former article 40 (5), which gives the MOJ the power to order the revision of a memorandum of association of an NGO or association as and when found necessary in order to protect "public interest", the Amharic version reads «የሕዝብ ጥቅም» has been dropped from the sub-article. We

are in favor of this approach because we fully appreciate and/or understand the difficulties that the term "public interest" can pose in application and interpretation.

By way of drafting, our suggestion and recommendation to merge article 40 (2) and article 45, which deals with a similar matter referring to the MOJ conducting sudden audit and designating inspectors and auditors to conduct these activities as indicated in article 45, has not been taken into consideration. (See page 25 (No.1))

## **Article 41**

### **Reporting**

Our suggestion and recommendation to delete sub-article (2) of article 41 because the Ministry can always circulate an NGO's report to any organ that it deems appropriate therefore there is no need to provide for an NGO or an association to submit its report to any organ the Ministry might designate, has not been taken into consideration and has been left in the draft proclamation as is (See page 25)

## **Article 42**

### **Accounting**

There is no difference on this provision.

## **Article 43**

### **Opening Bank Accounts**

There is no difference on this provision.

## **Article 44**

### **Investigating of an Organization**

With regards to article 44, our drafting suggestion and recommendation to harmonize this article with article 40 which deals with the power of the Ministry has not been taken into consideration nor has our suggestion and recommendation to redraft sub-article 2 as two separate sub-articles - one catering for the association's personnel and the other for the association itself. (See page 26 (a) and (b) respectively).

On the other hand our suggestion and recommendation to retain sub-article 3 and 4 which provides for the continuation of an association after some of its personnel or officials are removed as a result of an investigation has been taken into consideration and has accordingly been retained in the draft proclamation. (See page 26 (d))

With regards to the provision on investigation of an organization note that the argument and reasoning contained in article 40 also applies to this provision.

## **Article 45**

### **Inspectors and Auditors**

By way of drafting, our suggestion and recommendation to merge this provision with article 40, which deals with the power of the Ministry, has not been taken into consideration nor has our suggestion and recommendation regarding article 45.3 (b) which authorizes inspectors and auditors to enquire any person alone or before a witness. (See page 27 (a) and (b))

Most importantly our strong and persistent recommendation of adherence to the legal principle of sufficient and probable cause in order to warrant the sudden inspection and audit of an NGO or an association, has not been taken into consideration. (See page 27 (b) first paragraph)

## **Article 46**

### **Dissolution and Cancellation**

With regards to article 46 (1) (b), our suggestion and recommendation that the grounds for dissolution and cancellation of an association should not be frivolous as failure to submit report or information to the Ministry, but should apply to only grave and serious cases has been taken into consideration and as per our suggestion and recommendation this sub-article has been deleted from the draft proclamation. (See page 27 (a))

However most importantly our strong and persistent suggestion and recommendation that this provision should state that the grounds warranting dissolution and cancellation should be offences of a very grave and serious nature or repeated violation of the law and the need for credible evidence to prove this has not been taken into consideration. (See page 27 (b) and (c))

In a similar vein, our suggestion and recommendation that before dissolution or cancellation is considered an association who has been found in violation should be given an opportunity to correct it's behavior and to this end the MOJ should play an advisory role and put in place an administrative procedure under which it can give oral and written warning, reprimand or impose fine depending on the gravity of the violation, has not been taken into consideration. (See page 27 (e) and (f))

Most notably our strong and persistent suggestion and recommendation that this provision should clearly state that associations have right of judicial appeal from the decision of the MOJ to dissolve and cancel the association, has not been taken into consideration and does not exist in the draft proclamation. (See page 28 (h))

Note here that our position has been and still is that the final decision should be with a court of law and it is only a court of law that has the power to decide on the dissolution of an association. (See page 28 (k))

In case of offences of a very grave and serious nature or repeated violation of the law, the MOJ can press charges against such an NGO or association and after due process of law is fulfilled and/or met, then and only then the NGO or association found guilty of such a violation by a competent court of law, can by the decision of that court be dissolved and cancelled, even in that case the NGO or association will have the right of appeal to a higher competent court.

## **Article 47**

### **Suspension**

By way of drafting, our suggestion and recommendation to reposition article 47 dealing with suspension, to come before article 46 dealing with dissolution and cancellation, because the result of suspension could lead to dissolution and cancellation, has not been taken into consideration. (See page 29(e))

Our strong and persistent suggestion and recommendation that this provision should clearly state that there should be serious and grave grounds warranting suspension and that there should be a procedure for corrective measure taken by MOJ before considering suspension, has not been taken into consideration and does not exist in the draft proclamation. (See page 28 (b) and (c))

Most importantly our very strong and persistent suggestion and recommendation that the MOJ should within 48 hours from its decision to suspend an association, submit to the Federal High Court a request to dissolve the association or approve a proposal for the appointment of a provisional Board or Executive Committee until a new Board or Executive Committee members are elected and that it is only if the court approves the Ministry's request for dissolution that the association will be dissolved, has not been taken into consideration. (See page 29 (d))

Note here that the aforementioned legal principle also equally applies to dissolution and cancellation of associations as treated and considered under article 46.

## **Article 48**

### **Liquidation**

Our suggestion and recommendation for this provision to state that with regards to liquidation of associations, the Civil Code article 463-467 shall apply Mutatis Mutandis and for deleting article 48 (3) because if an association is in the process of liquidation, it cannot hold meeting unrelated to the liquidation process, have not been taken into consideration. (See page 29 (a) and (b))

## **Article 49**

### **Liquidators**

Our suggestion and recommendation regarding liquidation in article 48 above also applies to this provision.

## **Article 50**

### **Power and Duties of the Liquidators**

Our suggestion and recommendation regarding liquidation (article 48) and liquidators (article 49) above also applies to this provision.

## **Article 51**

### **Protection of Creditor's Rights**

Our suggestion and recommendation for this provision to state that relevant provisions of the Commercial Code shall apply Mutatis Mutandis, has not been taken into consideration.

## **Article 52**

### **Liability of Liquidators**

By way of drafting our suggestion and recommendation to reposition this provision and bring it right after article 50 and article 51 dealing with liquidation and protection of creditor's to follow, has not been taken into consideration nor has our suggestion and recommendation regarding liquidation issues dealt with in article 48, 49 and 50.

## **Article 53**

### **Income Generating Activities**

There is no difference on this very important provision as it stands. Note that there is a very important and relevant addition to article 53 (1), which states that particulars of income generating activities shall be determined by regulation issued pursuant to this proclamation which has been brought on board and added to this provision as and per our suggestion and recommendation. (See page 32 (n))

Also note here that having the basic principle of income generating activity being incorporated in this draft proclamation we have raised and indicated important points that need to be taken into account and consideration when dealing with the regulation that will be issued pursuant to this draft proclamation. (See page 31-32 (a) - (p))

## **Article 54**

### **Income Tax**

There is no difference on this provision.

## **Article 55**

### **Duty Free Rights**

There is no difference on this provision.

## **Article 56**

### **Right of Beneficiaries**

With regards to article 56 (2), our suggestion and recommendation that the provision that states an association must get the consent of the community prior to commencing work must be deleted because it gives the impression that if consent is withheld or delayed the NGO or association cannot function and be operational, has been taken into consideration and as per our suggestion and recommendation this has been deleted from article 56 (2). (See page 33 (a))

In its place our suggestion and recommendation that states that an NGO or association that engages in development activity shall, with the view of getting acceptance and recognition strive to inform and create awareness on the nature and objectives of its activity and our suggestion and recommendation that this should be redrafted in a way that clearly states that informing and awareness creation is purely recommendatory in nature and not compulsory or mandatory, has been brought on board as per our suggestion and recommendation. (See page 33 (b) and (c))

However with regards to article 56 (3), our suggestion and recommendation that the condition for facilitating participation of groups concerned in the activity of an NGO or association should be the

sole prerogative of the concerned NGO or association and that it should not be determined by the representatives of the victims of the problem as stated in article 56 (3), has not been taken into consideration. (See page 33 (d) and (e))

## **Article 57**

### **Appeal**

Our strong and persistent suggestion and recommendation that a new sub-article that clearly states that administrative decisions shall be appealable to a court of law should be added to this provision, has been accepted and has been brought on board as per our suggestion and recommendation. (See page 33 (a) - (c))

Accordingly a new sub-article 2 has been added which states that an NGO or association that is aggrieved or is not satisfied by the final administrative decision of the Minister can take its appeal to the Federal High Court.

## **Article 58**

### **Appeal Investigation Committee**

There is no difference on this provision.

## **Article 59**

### **Members of the Committee**

Our suggestion and recommendation to add a new sub-article 7 which will keep open membership of the Committee stating that as deemed necessary other Ministries or Organizations may become members of the Committee has been accepted and has been brought on board as per our suggestion and recommendation (See page 34 (a))

The draft provision has gone a step further by stating that two additional members may be added to this Committee by operation and application of this sub-article.

On the other hand our suggestion that instead of the MOJ having two representatives as stated in article 59(1), with the view of fair and balanced representation if it could have one representative and add one more representative to the NGO/CSO community and make their representation a total of three, has not been taken into consideration. (See page 34 (b) and (c))

## **Article 60**

### **Powers and Duties of the Committee**

There is no difference on this provision.

## **Article 61**

### **Meeting**

There is no difference on this provision.

## **Article 62**

### **Establishment - Advisory Board**

There is no difference on this provision.

## **Article 63**

### **Membership of the Advisory Board**

Our suggestion and recommendation to delete the representative of Security, Nationality and Immigration Authority and representative of Environmental Protection Agency respectively as stated in article 63(5), and 63 (7), and replace them with representatives of Ministry of Federal Affairs and Ministry of Capacity Building respectively, because they are more relevant to activities of NGOs/CSOs has been taken into consideration and included as per our suggestion and recommendation. (See page 35 (a) and (b))

Our suggestion and recommendation to also include a new sub-article, which states as deemed necessary, notable, eminent or prominent persons, in recognition of their contribution to and role in society, might become members of the advisory board, has not been taken into consideration. (See page 36 (c))

However in this regard it is important to note that instead of our suggestion and recommendation a more positive and beneficial new sub-article has been added in the draft.

Accordingly, pursuant to article 63 (11) of the draft, three members who will be elected by the General Assembly of NGOs or associations that have the greatest contribution in the development activities of the country, will be made members of the advisory role.

It should be noted that this is a significant development because in addition to the two representatives of the Union of NGOs or association, the addition of another three members in the Advisory Board, will bring the total representation of the NGO/CSO to five. Taking note of the important role the Advisory Board plays as stated in article 64 of the draft, adds to the significance and benefit of this new sub-article.

## **Article 64**

### **Powers and Duties of the Advisory Board**

There is no difference on this provision.

## **Article 65**

### **Meeting Procedure of the Advisory Board**

There is no difference on this provision.

## **Article 66**

### **Responsibilities and Functions of the Auditors**

There is no major difference on this provision as our suggestion and recommendation was purely of a drafting nature. (See page 36 (a) - (c))

## **Article 67**

### **Members of the management Board**

There is no difference on this provision.

## **Article 68**

### **Organization Established as Endowment**

There is no difference on this provision.

## **Article 69**

### **Union of Organization**

Our suggestion and recommendation for the addition of a new sub-article dealing with capacity building and enhancing the role and participation of NGOs or associations in the over all socio-economic development of the country among the list of activities of the Union of Organization, has been accepted and brought on board as per our suggestion and recommendation.

However, by way of drafting our suggestion and recommendation of dividing this provision into two sub-articles, one stating that NGOs or associations may establish a Union of Organization i.e. umbrella organization and a second stating the objective and list of activities of the Union of Organization has not been taken into consideration. (See page 38 (c))

## **Article 70**

### **Applicability of other Law**

There is no difference on this provision.

## **Article 71**

### **Transition Provisions**

There is no difference on this provision.

## **Article 72**

### **Penalty**

Our suggestion and recommendation in addressing this provision for taking into account and consideration the differentiation between grave cases or offences and ordinary cases or offences and indicating the penalty for each violation, has been taken into consideration and as per our suggestion and recommendation light and grave offences have been differentiated as indicated in article 72 (1) and (2) of the draft which is new and did not exist in the previous draft. (See page 39 (a) - (e))

## **Article 73**

### **Power to Issue Regulation and Directive**

There is no difference on this provision.

## **Article 74**

### **Effective Date**

There is no difference in this provision.

## **Conclusion**

Most of our suggestions and recommendations on critical issues such as indicated in the list of major areas of difference below, with the exception of the issue of definition of NGO/CSO, all the issues revolving around the unchecked power of the Ministry, have not been taken into consideration and account.

It is regrettable that despite our repeated and persistent protestation and prolonged discussion and discourse, the Ministry of Justice codification team had been unable or unwilling to consider these very critical issues. It seems they have opted to leave these critical issues in abeyance and seek a policy decision from higher authorities.

In this regard, it is indeed regrettable to note that all our endeavors and deliberation on these issues has all been in vain and to say the least, it has been nothing but a futile exercise.

In terms of drafting, in most respects the current draft is by far worse than the previous one. This is not surprising, as most of our suggestion and recommendations on drafting have not been taken into account.

In fairness it should be noted that some of our suggestions and recommendations on provision which border on less critical issues have been readily accepted and have been brought on board as per our suggestions and recommendations.

## **Major Areas of Difference**

- Article 2 (1) definition of Organization (NGO or Association).
- Article 6 (2) status of the property of an organization whose request of registration is rejected.
- Article 8 (1) the need for the Ministry to request recommendations prior to registration of an NGO or Association.
- Article 9 (2) (b) the term "Public Security", "National Unity" and "Public Interest" as being grounds for denying NGOs/CSOs registration.
- Article 40 - the power of the Ministry - MOJ, particularly article 40(3) deals with sudden audit of the accounts of NGOs or associations and suspension of bank accounts.
- Article 43 - investigation of NGOs or associations. Particularly article 43(2) deals with suspension of elected or employed personnel of NGOs or associations and suspensions of the NGO or association itself.
- Article 45 - the powers of inspectors and auditors. Particularly article 45 (3) (a), (b) and (c) which allow inspectors and auditors to conduct regular or a sudden inspection or audit of accounts of NGOs or associations, enquire any person alone or before a witness and copy or record any writing, or record, or other documents found in an NGO or association office.

- Article 46 - dissolution and cancellation of NGOs or associations.
- Article 47 - suspension of NGOs or associations.

These articles were and still are the main areas of difference. These are issues that need to be further debated and deliberated upon in order to arrive at an acceptable and workable NGO/CSO legislation.

These articles should be the primary and basic entry points for any further lobby, negotiation or advocacy work that should be taken up at all levels - public and private.

Bekure Herouy  
Legal Consultant  
June 2004