

**ACTIVITY REPORT ON**

**NGO/CSO**

**DRAFT LEGISLATION**

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## **Introduction**

Following the submission of the report outlining NGO observations and recommendations on the 3<sup>rd</sup> draft NGO Proclamation to the Ministry of Justice in December, 2003, the Task-Group (TG) delegated to follow-up the process (Ato Kifle Wedajo- IAG, Ato Kebede Asrat/ Ato Bekure Herouy – CRDA, and Ato Fikre Zewdie – AAE) got an audience with the Minister of Justice, H.E. Ato Harka Haroye on January 27, 2004.

The discussion highlighted the need for further collaborative work between the TG and the drafting team within the Ministry so as to finalize the Draft Legislation. In this regard, the Minister affirmed that his Ministry is still ready and willing to listen to and consider the observations and recommendations forwarded by the NGO/CSO Community.

He also noted that his Ministry would welcome efforts aiming at developing a comprehensive legislation with broader scope of application, beyond the conventional NGO domain. Accordingly, he invited the TG to work with the drafting team and produce a final document as soon as possible. The TG, appreciating the Minister for the additional opportunity, accepted the invitation to work with the drafting team.

The drafting team of the Ministry was composed of Ato Zenebe Borka and Ato Nikodimos Getahun. Ato Zenebe acted as an informal and unofficial chairman of the TG.

Since then, the TG has been working on the document with the drafting team during its regular Tuesday afternoon sessions right up to April 13, 2004, when the TG completed its work on the first joint review of the draft proclamation.

The Methodology the TG opted for was to first lay down to the Ministry of Justice team the basic principles on which the legislation should be predicated.

Briefly stated, the basic principles are the following:

- a. It should create an enabling environment for citizens to exercise their constitutional rights to freedom of association; and to that end,
- b. It should be predicated on those constitutional rights and existing laws that relate to the exercise in particular of the freedom of association; and
- c. It should reflect policy guidelines and widely accepted legal principles that constitute a conducive environment for the exercise of freedom of association.

The TG opted for this approach because it is essential to have an understanding of and appreciation for these basic principles from the outset.

After undertaking this necessary step, the TG started treating the draft legislation article by article starting with the title of the legislation and ending with the last provision, article 76 of the draft proclamation, in line with and on the basis of the observations and recommendations made by the NGO/CSO Community, which was submitted to the Ministry in December 2003.

This is a report on the deliberations of the TG and the progress made in developing the draft proclamation. Here is an article-by-article account that attempts to graphically and comprehensively describe and record what transpired during the successive meetings held by the TG.

## **Title**

The Title of the Draft Proclamation was “A Proclamation to provide for Non – Governmental Organizations”.

Noting the restrictive term and scope of Non-Governmental Organization (NGO) and in order to extend the term NGO to embrace association or organization which operate in wider fields of activities rather than those NGOs which in common parlance are usually known as membership and non-membership organizations voluntarily formed to promote one or several development purposes. Also noting the lack of clarity of purpose of the proclamation as indicated in the title of the draft, it has been agreed to;

- a. Use the more embracive term “Association” in the title of the Legislation.
- b. Drop the previous title of the draft that read “A Proclamation to Provide for “Non-Governmental Organizations” because it does not clearly state the purpose of the legislation and replace it with the title of a “Proclamation to Regulate the Registration and Operation of Associations.”

## **Preamble**

Noting the importance of from the outset stating the constitutional basis of the proclamation, it has been agreed that;

- a. The preamble will contain and reflect the sprit and letter of article 31 of the constitution of the FDRE dealing with freedom of association.
- b. Accordingly the draft proclamation in its preambular first paragraph will state that every person has the right to freedom of association for any cause or purpose and that this proclamation has been enacted to enable citizens to exercise this basic constitutional right.

## **Article 1**

### **Short Title**

Noting the change made to the title of the draft proclamation, it has been agreed as stated above that the provision will read “This Proclamation may be cited as the Proclamation to Regulate the Registration and Operation of Associations Proclamation No...../2004”

## **Article 2**

### **Definition**

Noting the lack of clarity of the definition of the word “Organization” as referred to in the draft in article 2(1) and the difficulty that this poses, further noting the limited restrictive and the non – illustrative nature of the definition in the draft proclamation, it has been agreed to;

- a. Adopt a definition that clearly indicates the manifestations and characteristics of associations.
- b. Replace the word “Organization” by that of “Association” and make the definition of “Association” broad, accommodating all relevant entities (NGOs/CSOs).
- c. Focus mainly on the attributes of NGOs/CSOs and those attributes will be spelt out and clearly stated in the definition.
- d. Accordingly the definition shall, inter alia, state that an association is a legal entity established in accordance with the relevant laws of Ethiopia as a voluntary, non-profit-making association, non-governmental organization and that its purpose is to promote the welfare of the general public, to render specific services to specific categories or persons, or to promote the advancement of art, science or human rights and good governance etc....

## **Article 3**

### **Scope of Application**

Noting that this provision of the draft lacks clarity and is ambiguous because it does not clearly state whether the scope of application of the draft proclamation is limited to only those associations or NGOs which operate in more than one regional state or whether it applies to those NGOs that operate in one regional state but state in their memorandum of association that they intend to operate in more than one regional state.

Noting also that it is not clear whether the draft proclamation is intended to apply in administrative units, which are under Federal Jurisdiction i.e. Addis Ababa and Dire Dawa or not, further noting the need to clarify this issue and avoid ambiguity, and redraft this provision accordingly it has been agreed that;

- a. The scope of application will clearly state that the legislation shall apply to NGOs/CSOs or associations that state in their memorandum of association that they intend to operate in more than one regional state in the future but do not do so during registration and that they must not necessarily start by operating in more than one state and;
- b. That the Federal Legislation includes and applies to Addis Ababa and Dire Dawa.

#### **Article 4**

#### **Establishment**

Noting that the English and Amharic versions of this provisions are at variance and it is thus necessary to reconcile the Amharic and English versions and further noting that type of services that NGOs/CSOs or associations are expected to render is limited and is not either fully illustrative or exhaustive and further noting that the five person requirement for establishing an association as stated by article 4(1) of the draft is at variance with the civil code which states that two or more persons can form an association and thus the need to either harmonize this or justify why not less than five persons are required to establish an association.

Further noting in this connection that on the one hand though article 404 of the Civil Code states that two or more persons are required for establishing an association while on the other hand article 11 of the Regulation for Registration of Association states that five persons are needed to register the association and also noting that the practice has been adherence to the five persons requirement.

Further noting the need to adhere to established practice and take into consideration the practicality of only two persons forming an association, especially when it comes to addressing issues of voting and democratic procedures and the issue of structures of associations i.e. General Assembly, Executive Committee and/or Board. And also noting that the list of services rendered by associations has only been limited to four as stated in article 4(2) of the draft, it has been agreed to;

- a. Retain article 4(1) as it is in the draft and stick to the five-person requirement.
- b. With regards to the type of services that associations perform, in order to make the list illustrative if not exhaustive, instead of indicating services that associations are expected to render, to refer to their objectives framed in generic terms.

- c. Enlarge the services rendered by associations e.g. promotion and advancement of science, technology, art, culture, human rights, environment protection etc and;
- d. Add a phrase “of a similar nature” to indicate that the list is not exhaustive but only illustrative allowing for further expansion and a wider interpretation as time goes by and as and when the need arises.

## **Article 5**

### **Memorandum of Organization**

Noting that though the intention and objective of this provision is known, that it does not fully or comprehensively indicate the main features that should be continued in a memorandum of an association as stated in article 5(2) of the draft and also noting the shortcomings it has in drafting, as indicated in article 5(3) that deals with the relationship between a memorandum of association and third parties and also noting the misplaced reference to the board in article 5(4) of the draft, it has been agreed to;

- a. Include a provision that states in the absence of a head office at the time of its formation, an association may designate the domicile of one of its founders as a temporary location of its headquarters on condition that it will notify the Ministry the location of its headquarters within six month of the signing the memorandum.
- b. Revise article 5(3) dealing with memorandum of association and its relation to third parties in order to avoid conflict with other relevant and applicable laws and not to unnecessarily burden this legislation with issues that can better be served by other relevant and applicable laws thus only reference in this provision of these laws will suffice. Therefore redraft this sub-article accordingly.
- c. Remove the provision dealing with powers of the board from article 5(4) of the draft and take and replace it to its right and relevant place, the provision dealing with issues of the board of an association – article 31 of the draft proclamation.

## **Article 6**

### **Registration Process**

Noting that the entire provision is not well drafted and needs to be revisited and also noting the difficulty that the provision which states that where request for registration is rejected properties owned by the organization to be established shall be transferred to the government or an organ designated by the Ministry as stated in article 6(3) of the draft proclamation poses, also noting the need to look into this provision carefully and in more detail.

It has been agreed that this provision will be redrafted taking into consideration and account;

- a. The need to define committed money, does it relate to money in bank or money mentioned in the project proposal.
- b. The need to define what we mean by funds or resources committed- drawing the line between pledge and commitment.
- c. The need to determine whether that money sent by international non-governmental organizations through a bank in Ethiopia prior to registration is considered as committed money and if so what is to be done with such money.
- d. The need to protect private property from being confiscated or expropriated by operation and application of this provision.
- e. The need for letting the founders of the association choose who the beneficiaries of the pre-registration fund should be and to whom it should go.
- f. The need of not limiting or prohibiting activities of founders before registration – necessary activities such as getting together to raise funds or to look for premises or interviewing potential staff recruits.

It has been agreed to revisit and redraft this provision taking into consideration and account all the aforementioned points.

## **Article 7**

### **Application**

Noting the problem related to the issue of application form for registration of an association as stated in article 7(1) of the draft and further noting that the current practice lacks transparency and poses serious problems to association wanting to apply for registration, further noting the need for redrafting this provision in a way that it can help avoid these problems and shortcomings.

Accordingly it has been agreed that;

- a. The regulation to be issued regarding the particulars of the content of application form and fee will be published in the Negarit Gazette so that it can become public notice and can not be abused by the executive i.e. the Ministry of Justice in this case and will make the entire application process transparent and free from unnecessary bureaucratic interference and tampering.

- b. The provision of article 7(2) and (3) should clearly state that a representative of the founders can deal with the registration process and to do so does not need a legal instrument issued by a public notary empowered to issue power of attorney but that the minutes signed by the founders authorizing one of the founders to follow up the registration process will suffice.

It has been agreed to revisit and redraft this provision taking into consideration and account the aforementioned points.

## **Article 8**

### **Recommendation**

Noting that requesting recommendations from other organs of government before registration as stated in article 8(1) of the draft is and can be invariance with article 31 of the FDRE constitution which stipulates that citizens have the right to create associations so long as their purposes are lawful, further noting the need for this provision to be revisited and redrafted in order to make sure that on the one hand it serves the purpose it has been designed for and on the other hand makes sure that it does not violate, inhibit or limit constitutional right of citizens to establish associations.

It has been agreed that;

- a. The provision of article 8(1) of the draft should take into account and cater for the need of clearly stating that the requirement of recommendation prior to registration does not apply to local NGOs whose right of establishing an association is guaranteed by the constitution.
- b. If recommendation is necessary it should apply only to INGOs who as of necessity and other considerations need to be screened prior to registration.
- c. The need for this provision to clearly state that the objective of this provision is not to limit the right of establishing association by delaying the registration process and using any wording that guarantees this.
- d. To put a time limit for recommendation and make registration automatic incase of failure to meet the set time limit with no need to give additional time for request for recommendation as stated in article 8(1) and (3) of the draft.
- e. The need for not leaving the time needed for recommendation to a regulation but to be addressed in this provision under this legislation as stated in article 8(1) of the draft.
- f. As there is a difference of opinion and position on this issue, to consider this as a policy issue and should thus be treated accordingly by the competent authorities.

## **Article 9**

### **Certificate of Registration**

Noting that this provision contains controversial issues and concepts such as “national unity” and “public interest” as stated in article 9(3) of the draft which have been put as a precondition for association registration and noting more specifically that the provision which states that the Ministry shall investigate that the purposes of the organization are not against national unity or interest of the public, poses serious problems that need to be looked into carefully and in more detail.

Noting also that this issue had brought about fundamental difference of opinion within the TG. The NGO/CSO representatives within the TG have argued that these are very loose and ambiguous terms and concepts that can easily be abused and open to subjective and arbitrary interpretation and application.

In this regard it has argued that “Public Interest” is a highly contested concept, and it cannot be left to a government agency to decide what constitutes public interest. That in most democratic societies, legislators determine what constitutes public interest from time to time and in specific contexts, in legislations they pass and that such determinations are often not permanent and are likely to change depending on election outcomes. That to insert in this legislation the concept of “National Unity” in a broad and undefined sense might interfere with citizen’s right of association and freedom of speech.

Noting that the central team of all these arguments and points being that the government has the obligation to proactively facilitate the exercise of freedom of association and to this end should enact a legislation that cuts off bureaucratic red tape and cumbersome and time consuming registration process and that this provision, one among others, does precisely this by predicating certificate of registration on controversial terms such as “public interest” and “national unity”.

Further noting that on the other hand member of the TG in the Ministry of Justice codification department have argued that the government has the obligation to protect the national interest and security of its people and the country and in doing so it should check and ensure that certain activities of its citizens or foreigners establishing an association or NGO and operating in Ethiopia are not undermining “Public Interest” and the “National Unity” of the country and its people.

This they argued is the prerogative of the state and in this context with regards to NGOs or associations this obligation has by law been given to the Ministry of Justice. They have further supported this line of argument by referring to the danger of terrorism that we all face all over the world and the possibility that NGOs or associations could wittingly or unwittingly be used as fronts to promote and undertake terrorist activities that can endanger public interest and national unity of Ethiopia.

In light of the aforementioned it has been agreed that;

- a. In order to avoid confusion the term “Public Interest” should be interpreted and applied inline with international human rights conventions and the constitution of the FDRE.
- b. In order to avoid the difficulties that the term “National Unity” poses, to replace the phrase “Activities against National Unity” by “Activities that violate the constitution”.
- c. This provision and the issues contained therein needs a policy decision and can not be decided upon by the TG and should thus be presented to the competent authorities clearly indicating both positions and sides of the arguments in order to facilitate the decision making process.

## **Article 10**

### **Renewal of Registration Certificate**

Noting that the issue of certificate of registration is related with the issue of renewal of registration, and further noting that members of the TG representing NGOs/CSOs have forwarded the same argument and reasoning as that forwarded on the issue of certificate of registration.

Also noting that more specifically they clearly stated that since associations are required to submit annual reports of their activities, there is no compelling need to require renewal of registration every three years so long as they continue to operate in accordance with this proclamation and other relevant laws and further noting that such requirements would create an unnecessary bureaucratic burden on the Ministry’s registration office as well as on the association.

Also noting on the other hand that members of the TG in the Ministry of Justice held to the position that in order to ensure that associations are operating according to their stated activities as per their memorandum of association and in order to control and supervise their overall activities, it is mandatory, indeed necessary to have a provision that compels and obliges them to renew their registration certificate every three years.

Finally noting that there is a fundamental difference of opinion on this issue, it has been agreed to clearly state both positions and arguments and seek a policy decision on the subject matter.

## **Article 11**

### **Merger**

Noting that the governing body of an association includes both the general assembly and the board and the provision only refers to Merger of NGOs being decided by their respective general assembly as stated in article 11(1) of the draft with no reference to the board, it has been agreed to redraft this provision so that it also includes the decision of the respective boards of the merging associations.

## **Article 12**

### **Division**

Noting in a similar manner that the division of NGOs has been left to only the general assembly as stated in article 12(1) of the draft without any reference to the board of the NGOs.

Also noting that since the newly formed NGOs have no legal position to decide on the division of rights and obligations and noting that this cannot be done by agreements among the entities that resulted from their division as stated in article 12(1) of the draft thus the need to redraft article 12 (2) clearly stating that the division of rights and obligations between or among the ensuring entities will have to be decided by the general assemblies or the board of the pre-existing association.

Accordingly it has been agreed to;

- Redraft article 12(1) so that it also includes the board in the decision of the division of the NGOs.

## **Article 13**

### **Conversion of Foreign Organization into Local Organization**

Noting that the Amharic and English versions of the sub-article are at variance.

Also noting that “particulars of conversion” as stated in article 13(2) should not be left to a regulation or directive to be issued by this proclamation, it has been agreed to,

- a. Reconcile the two versions.
- b. Redraft article 13(2) clearly stating that the structures of the entity ensuing from the conversion of the NGO or association should fall under the requirements of this proclamation.

## **Article 14**

### **Conversion of Organization Registered by a Region into National Organization**

Noting that sub-article 14(1) the draft does not clearly state the scope of application of this proclamation but merely states that any regionally registered organization which needs to operate outside such region shall register by the Ministry, and noting the need to avoid ambiguity.

Accordingly it has been agreed to;

- Redraft this provision inline with article 3 as and per agreement reached on this provision.

## **Article 15**

### **Membership**

Noting that this provision only deals with and refers to membership requirement as defined in the memorandum of association of an NGO and that it leaves the issue of membership to be determined by the association and noting that it does not address the issue of non-discrimination in membership criterion.

Accordingly it has been agreed to;

- Redraft this provision in a way that clearly states that membership should not be discriminatory and should adhere to and be in line with basic principles of the constitution of the FDRE and other applicable and relevant human right conventions.

## **Article 16**

### **Rights of Members**

Noting that sub-article 16(1) of the draft refers to endowments which are not membership organizations and therefore seems to have been miss-placed and also noting the reference in this provision to rights of membership not being transferred to heirs as stated in article 16(2) of the draft is redundant and unnecessary because such voluntary membership rights cannot obviously be transferred to heirs.

Also noting that judicial persons including associations are permitted under article 15 to be members in an association, and that in the case where an NGO, which is a member in another association, is itself divided into two or more entities, there is no provision for addressing how membership rights should be transferred to the ensuing entities. It has been agreed to;

- a. Redraft article 16(2) in such a way that reference to endowment will be retained but the context in which it is used here will be made clear.
- b. Delete the provision that deals with membership rights not being transferred to heirs because it is redundant and does not make any sense in the context it has been inserted in this provision.
- c. Redraft this provision in such a way that it will make an exception to this sub-article and accommodate this kind of transfer of rights and obligations.

## **Article 17**

### **Duties of Members**

Noting that the issue of making the exercise of rights by a member of an association contingent upon the discharge of his duties is a matter that falls within an association internal governance, It has been agreed that;

- a. It should not be included in this proclamation because there is no need to include it here as formulated in this provision.
- b. On the contrary to redraft this provision in a positive tone stating that if and when a member of an association is denied his membership right in contravention of the memorandum of association or other law of the country, he will have the right to seek administrative and ultimately judicial recourse as envisioned and mentioned in article 21 of the draft proclamation.

## **Article 18**

### **Termination of Membership**

Noting the need to clearly indicate the grounds of termination of membership, it has been agreed to;

- Retain this provision, as it is and if there can be more grounds for termination other than those mentioned in the provision it must be included and the grounds should be expanded.

## **Article 19**

### **Structure of the Organization**

Noting that this provision is poorly drafted and lacks clarity and as this is not a substantive issue but that of drafting, it has been agreed to;

- Redraft this provision based on the objective it is intended to serve i.e. indicate the possible ways in which an association may be organized e.g. General Assembly, Executive Committee and/or Board, Auditor etc...

## **Article 20**

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

Noting the need for regulating the powers and duties of the General Assembly of associations, especially on critical issues such as election of officers, merger, dissolution and division of associations, it has been agreed to;

- a. Retain this provision as is and if possible expand its regulatory elements more than those mentioned in this provision.
- b. Redraft the provision so as to make it more comprehensive and protective of rights and of interests of members of an association and that of the association itself.

## **Article 21**

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

Noting that during the course of the discussion on this provision the NGO/CSO representatives of the TG pointed out to the Ministry of Justice codification members of the TG that it was ironic, to say the least, that while the draft of this article had provided for a provision whereby a member of an association can challenge the decision of the association directly at a court of law, there is no provision that provides an association to seek judicial appeal from a decision of the Minister in the event of denial of registration or dissolution of an association.

While noting the need for maintaining this provision in the draft legislation redrafted on the basis of the following points, the TG had well noted this inconsistency and inadequacy and has agreed to consider this observation when the issue of suspension and dissolution of associations is to be discussed.

Noting that this provision as it currently stands, can. Possibly be subject to abuse by a member of an association and can be used to harass the association and can led to needless and frivolous litigation, it has been agreed that we should put a check on this unqualified judicial recourse.

Accordingly it has been agreed that the following should be included in this provision before a member resorts to judicial recourse challenging the decisions of his association's highest decision making body e.g. General Assembly, it must be established that: -

- a. There is cause of action.
- b. There must be an indication of the gravity of the infraction.
- c. There must be a prior requirement of administrative redress or review.
- d. In the case of a compliant knowingly presenting false charge intended to harass the association, such a person should be held accountable.

It has been agreed to consider these points and redraft this provision accordingly.

## **Article 22**

### **Meetings**

Noting that article 22 sub-article (2) and (3) should be seen together with article 21 and noting that the principle contained in article 21 should be applied consistently, in case where the chairperson of an association fails to convene the meetings of the general assembly within 30 days from the day of which request has been made by its members, it has been agreed that;

- a. Application for convening the meeting must first be lodged with the Ministry of Justice.
- b. It must be the MOJ who should nominate a chairperson of the general meeting.
- c. Judicial recourse should only be considered in case where the MOJ fails to discharge this responsibility. The rationale for this approach is based on the same rationale provided in article 21.
- d. Consider this point and accordingly redraft this provision.

## **Article 23**

### **Agreement in Writing**

Noting the need for the inclusion of this provision in the draft legislation as it provides a mechanism where in the case it is impossible to convene a meeting due to force majeure, members by written signatures can express their agreement which shall be deemed to amount to the decision of the general meeting, and noting the need to guard this practice from abuse.

Accordingly it has been agreed to;

- a. Have a provision that addresses such a situation in the draft legislation. Therefore leave this provision as it is.
- b. Put in place a mechanism of signature authentication in order to make sure that the signatures acquired thus are authentic and genuine and express the true decision of the members.

## **Article 24**

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

Noting that the powers and duties of the executive committee are normally provided for in the memorandum of association and as such is considered as an association's internal governance and noting that the MOJ can play a helpful role by developing a model memorandum of association that indicates what points should be covered and outlining the powers and duties of the Executive Committee, in this connection noting the positive role that the MOJ can play thus the need to retain this provision in the draft but to review the seven sub-articles with the view of examining their utility.

Accordingly, it has been agreed to;

- a. In sub-article 24(4) to limit the power of the Executive Committee only to the appointment and dismissal of the Manager of the association and not to extend this power to heads of departments of association.
- b. Delete article 24(6), which refers to income generating activities and fund raising, because we have separate provisions, which cater for these issues.
- c. Delete article 24(7), which refers to issuing directive in respect of employment, promotion, transfer and fringe benefits of the employee of the association, because since it is the manager who is responsible for the employment of the employee of the association, there is no point in giving the Executive Committee powers, and duties over which it has no roles.

- d. Add another new sub-article at the end that states that the list of activities mentioned in this provision is only illustrative and not exhaustive and that the Executive Committee can also have the power and duty over similar activities.

## **Article 25**

### **Term of office of the Committee**

Noting the rational for limiting the term of office of the Executive Committee of an association and the need for new blood and renewal, it has been agreed to;

- Leave this provision as it is.

## **Article 26**

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

Noting the need to define or indicate the grounds or reasons why members of the Executive Committee may fail to carry out their activities under article 26 (1) e.g. death, sickness, incapacity etc, and noting the need and rational for article 26(2) which states that board members shall not serve in more than three organizations at the same time.

It has been agreed to;

- a. Leave article 26(1) as it is.
- b. Transfer sub-article 2 to its appropriate place, the part that deals with the Board of an association.

## **Article 27**

### **Suspension of Voting Rights**

Noting the need for guarding against conflict of interest and the need to limit the voting rights of members of the Executive Committee on matters that they have already passed decision on, it has been agreed to;

- Leave this provision as it is.

## **Article 28**

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

Noting the discussion and agreement reached on the provisions dealing with the power and duties of the General Assembly (article 20), and the power and duties of the Executive Committee (article 24) equally apply to this provision, it has been agreed to;

- a. Add a new sub-article that limits acts of the manager and imposes a restriction on the issue of sale, transfer, pledge or mortgage of all immovable properties of the association.
- b. Redraft and leave this provision as it is.

## **Article 29**

### **Transitional period until the Admission of New Members**

Noting that this provision is designed to cater for and address a situation where due to the limitation of the founders of an association to the minimum of five during establishment they could be compelled to take over and act the role of the General Assembly, the Manager and the Board for a certain period- in which case there should be a provision that caters for this transitional period. And noting that this provision is intended to address such a situation.

Also noting on the other hand that if the association is a membership association, it can accept new member in accordance with its memorandum of association and if the association is Board- led association, the founders will have agreed on who will serve in the Board at the time of registration. Therefore there is no compelling need for providing a provision that will cater for a transitional arrangement.

It was also noted that as long as the founders of the association meet the necessary requirement for establishing an association i.e. five persons - their only option is a board or executive format until such a time when new members will be admitted.

Therefore this situation cannot be applicable in a general assembly format and they should wait until new members are admitted and form a general assembly. In which case they can amend their memorandum of association in such a way, as it can be general assembly membership based association.

Further noting that what the draft law should do is only recognize that associations can reorganize themselves according to their needs and choice and state this clearly in the draft legislation.

Accordingly it has been agreed to;

- Revisit the entire provision in light of the above noted and considered points.

### **Article 30**

#### **Structure of the Organization**

Noting the discussion and agreement reached on the provision that deals with General Assembly (article 20) equally also apply to this provision, it has been agreed to;

- Consider the same points during the redrafting of this provision.

### **Article 31**

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

Noting the discussion and agreement reached on the provision that deals with General Assembly equally also apply to this provision, it has been agreed to;

- Consider the same points during the redrafting of this article.

### **Article 32**

#### **Right and Obligations of the Organizations**

Noting that associations should have the same rights, privileges, powers and immunities generally applicable to legal persons and that the same should apply with respect to civil and criminal law prohibitions and sanctions.

Further noting the discussion and agreement reached with regards to article 15 dealing with membership of an association, apply also equally to Board members.

Also noting that what has been stated in article 32(2) of this provision dealing with limiting the number of associations in which one can serve as a board member to not more than three at the same time also apply equally to limiting the term of office of a member of the Executive Committee to not more than consecutively three times as stated in article 25(2).

Also noting the difficulty of judging or evaluating whether a board member has discharged his obligation as stated in article 32(3) can pose to the MOJ, it has been agreed to,

- a. Delete sub-article 32(3).

- b. Take into consideration and account the aforementioned points during the redrafting of this provision.

### **Article 33**

#### **Powers of the Manager**

Noting that reference has wrongly been made in this provision to article 31 which deals with power and duties of the board which is not relevant here and if reference is to be made it should be to article 28 which deals with the power and duties of the manager, which is more relevant and has already been dealt with and addressed, it has been agreed to;

- Delete this provision because it is redundant.

### **Article 34**

#### **Foreign Organization**

Noting the need for the existence of this provision and also noting the confusion that the poor drafting of article 34 (3) which states that a foreign organization shall be considered as an Ethiopian organization established under Ethiopian law can pose, it has been agreed to;

- a. Redraft it in clear language stating that Ethiopian law shall apply to foreign organizations registered in Ethiopia.
- b. Retain this provision as it is.

### **Article 35**

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

Noting that this provision should be read together with article 34 and noting the need to clearly state that the underlining principle with regard to foreign organization or association operating in Ethiopia is that the governing and applicable law is Ethiopian law, it has been agreed to;

- a. Redraft this provision stating that the management of foreign organization shall be governed by Ethiopian law
- b. Non-applicable laws for foreign NGOs shall be clearly stated in order to avoid ambiguity.

- c. Retain the sub-articles of this provision.

### **Article 36**

#### **Relationship with Local Organization**

Noting that this provision as it stands can easily be construed as imposing a legal obligation on foreign NGOs to build the capacity of local NGOs and noting that an issue like this can be covered or governed by code of conduct or other policy instruments rather than by this mandatory provision, it has been agreed to;

- Delete this provision from the draft legislation.

### **Article 37**

#### **Rights and Obligations**

Noting that the objective of this provision is to state the effect of an association's registration as a judicial person, it has been agreed to;

- Transpose this provision to the part of the draft legislation that deals with registration of associations.

### **Article 38**

#### **Name**

Noting that in addition to the administrative protection extended to the name of an association as stated in this provision, also noting the need for this provision to clearly state that the name of association also enjoys judicial protection. Therefore the need to redraft this provision in a way that can accommodate this too, it has been agreed to;

- a. Redraft this provision clearly stating that the name of an association enjoys judicial protection.
- b. Retain this provision and for clarity sake redraft this provision.

### **Article 39**

#### **Capacity**

Noting that the objective of this provision is to state the effect of acquisition of legal personality as a result of registration,

It has been agreed to;

- Transpose this provision to the part of the draft legislation that deals with registration of NGOs.

## **Article 40**

### **Extra - Contractual Liability**

Noting that whether it is stated as it is in this provision or not all judicial persons come under the Civil Code relating to extra - contractual liability and unlawful enrichment, also noting that it's objective is to state the effect of registration of an association as a judicial person, just like the other effects of registration as contained in article 37, 38, 39 and 40 above, it has been agreed to;

- a. Retain and for clarity sake redraft this provision.
- b. Transpose this provision to the part of the draft legislation that deals with registration of NGOs.

## **Article 41**

### **Property of the Organization**

Noting that this provision provides protection to the properties of NGOs,

It has been agreed to;

- Retain it as it currently stands.

## **Article 42**

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

As this provision as it stands in the draft is controversial and undisputedly the most contentious part of the draft legislation, it has been agreed from the outset to address this provision in detail so as to clearly articulate and indicate our respective positions and opinions on this crucial matter with the view to clearly present the case and facilitate the policy decision making process by clearly outlining the basic issues that need to be addressed and resolved.

It has been noted that there is a need and rationale for granting regulatory powers to the Ministry of Justice on the one hand and on the other hand noting and being aware of the danger of granting broad and sweeping and ill-defined powers and imposing unbounded governmental intrusion can pose.

Also noting that this function can be a course for and can give ground to MOJ not only to intrude into all aspects of an NGOs management thereby destroying all semblance of its autonomy, but it can also be contrary to the letter and spirit of providing an enabling legal framework for exercising freedom of association which is and should be the *raison d'être* of the draft legislation.

It has been noted that even in the event that the Ministry would be determined to exercise the powers granted to it under article 42 (1) - (5), the Ministry does not have the requisite professional and administrative staff and financial resources to enable it exercise that kind of ongoing, close supervision, inspection, and evaluation.

It has been noted that under article 42 (1), the Ministry has been given the power to follow up, evaluate and supervise work accomplishment of any NGO and take necessary measures. Under article 42(2) it can conduct or order the conduct of regular and sudden audit of accounts of NGOs and it may suspend bank accounts till a decision is given as may be necessary. Under article 42(5) it can order the revision of a memorandum of an NGO as may be necessary to protect public interest.

Noting the need to define loose terms such as “follow up”, “supervise” and “evaluate”, the following questions have been raised. What is meant by "follow up" and "supervise" and "evaluate work accomplishment" of an NGO or associations? Does it imply that the Ministry can send its own personnel to each association to ascertain what it is doing or to evaluate its activities and pass judgment? Or is the Ministry to exercise the functions those powers give it by examining the association's annual report or by undertaking unannounced periodic forays?

It has been noted that on the other hand the MOJ codification team in the TG have argued that since most NGOs or associations are public benefit organizations and are established to serve the broad public in one way or another, the Ministry of Justice must control and supervise and/or regulate the activities of NGOs in order to ensure that they are serving their intended purpose and are not engaged in self enrichment and other activities that are contrary to the public interest and even the national security of the country. This is necessary the more so because as some NGOs have been found engaging in activities contrary to what is stated in their memorandum of association.

The need for control and supervision of NGOs has been even more compounded by recent developments of global terrorism and the practice of using NGOs as fronts to promote terrorism.

In light of these developments, the argument goes the government has the responsibility of protecting the public interest and the national security of its citizens and one way of doing so is by controlling and supervising and/or regulating the activities and operations of NGOs and in order to discharge this responsibility, it must be empower by law to have the requisite powers that will enable it to function efficiently.

Therefore article 42 is designed as one means of exercising this power of control and supervision. It is designed not with the intention of penalizing or jeopardizing or restricting the activities of all NGOs, but only those rouge NGOs that must come under close scrutiny and control of the Ministry to ensure that they do not deviate from the activities stated in their memorandum of association.

It has been noted that in a similar vain a debate had been conducted as to whether NGO property is public or private property.

Accordingly it has been argued that the rational for MOJ intervention in controlling and supervising the activities of NGOs is based on the theory that NGO property and fund are public in nature. Therefore needs supervision and control to make sure that it is not abused.

It has been noted that on the other hand it had been argued that there is a big difference in "public interest" and "public property". NGO property is not public property. Therefore the government has no legal rights to interfere in the property of NGOs. The government can interfere only in the case where the NGO is dissolved. This is the only condition under which the government can interfere in the property of an NGO.

Following the aforementioned discussion and debate the following issues that need to be looked into in more detail have been agreed upon.

Accordingly;

- a. It has been agreed that the MOJ should have the right and the power to regulate the activities of NGOs but this must be guided by specific guidelines that clearly define what is meant by "follow up" "evaluate and supervise work accomplishment" under article 42(1) of the draft legislation.
- b. It has further been agreed that "follow up" and "supervision" will not include routine day-to-day activities of NGOs.
- c. It has also been agreed that the details of "follow up" and "supervision" will be worked out and outlined in a directive or regulation to be issued simultaneously with the proclamation.
- d. In order to clearly state that "follow-up" and "supervision" does not apply to the day-to-day routine activities of NGOs and in order to clearly indicate and allay all legitimate fears and anxieties that this does not led to taking arbitrary measures, it

has been agreed to predicate "follow-up" and "supervision" under article 42(1) on this proclamation and other laws and regulations issued following this proclamation. The Amharic version reading «በዚህ ሕግ መሠረት እና ይህንን ሕግ መሠረት ባደረጉ ሕግጋት መሠረት ይከታተላል፣ ይቆጣጠራል» The rationale for including this point is to in no uncertain terms indicate that “follow-up” and “supervision” will only be undertaken on the basis of law.

- e. It has also been agreed to delete the phrase “take necessary measures” from article 42(1) because it has a negative and ominous connotation.
- f. With regards to the MOJ conducting or ordering the conducting of regular and a sudden audit of accounts of NGOs and suspending of bank accounts of NGOs, it has been agreed that this sub-article should contain the basic legal principle of “sufficient and probable cause” The Amharic version reading «በቂና አሳማኝ ምክንያት ሲኖረው»
- g. Accordingly under article 42(2) 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 the NGO will be conducted by the MOJ. Therefore if such are the grounds for audit there is no need for regular audit of accounts. In light of the foregoing, it has been agreed to delete “regular audit of account” and only in the case of suspect activity will sudden audit of account be conducted by the MOJ and even in such case there must be sufficient and probable cause that it can show to a court of law if such a measure is challenged by the NGO.
- h. With regards to the MOJ suspending bank account of NGOs, it has been agreed that the principle of sufficient and probable cause should also apply here.
- i. It has also been agreed that there should be a time limit for suspending the bank account of an NGO. Accordingly MOJ can suspend bank account of an NGO only for a limited time. It has to then 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»
- j. With regards to article 42(4), which empowers the MOJ to require for a report within one month in a situation where there is doubt in the operation or activity of an NGO, noting the rational of this sub-article, it has been agreed to retain it as it is.
- k. With regards to article 42(5) which gives the MOJ the power to order the revision of a memorandum of an NGO or association as and when found necessary, noting the advantage that this provision provides by making provision for rather than calling for dissolution of the NGO, if it is found that it has engaged in activities other than those mentioned in its memorandum of association, it provides for the continuation of the NGO with the opportunity of reorganizing it’s objectives and structures as need be. It has also been noted that this should be construed in a positive manner and be considered as one example whereby the MOJ plays a

positive and advisory role in regulating NGOs, it has therefore, in this connection been agreed 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.

- l. It has also been agreed to consider the best practice of other countries in addressing this issue.
- m. Finally, it has been agreed on the basis of the aforementioned points and comments, to redraft the entire provision of article 42 accommodating the aforementioned agreed upon points.
- n. By way of drafting, noting that article 42(2) and article 47 deal with similar matter referring to the MOJ conducting sudden audit and designating inspectors and auditor to conduct these activities as indicated in article 47, it has been agreed to merge these two provisions and as chapter six of the draft proclamation deals with supervision and control or the regulatory powers of the MOJ, it has been agreed to streamline and bring the various acts of supervision and control, in a list form, under one provision.

### **Article 43**

#### **Reporting**

Noting that since by virtue of article 43 (1), the Ministry can always circulate an NGO report to any organ that it deems appropriate, there is no need under sub-article 2, to provide for an NGO or an association to submit its report to any organ the Ministry might designate,

Accordingly it has been agreed to;

- Delete the sub-article.

### **Article 44**

#### **Accounting**

Noting the need for all NGOs or associations to have a book of accounts and submitting such book of account to the Ministry whenever requested to do so poses no problem, as this can be an affirmation of the practice of transparency,

It has been agreed to;

- Retain and leave this provision as is in the draft proclamation.

## **Article 45**

### **Opening Bank Accounts**

Noting that an NGO or association can open a bank account in any bank not only the Commercial Bank of Ethiopia and noting that the existing practice of upon acquisition of certificate of registration, notifying the Commercial Bank by making a copy to it nor does the existing practice of DPPC writing a letter to the Commercial Bank in order for an NGO to open a bank account has no legal basis, also noting that the only condition should be notification be it to the Ministry or to the donors of the NGO or association as they are bound to do so in their financial report as stated by this provision,

Accordingly it has been agreed to;

- Retain and leave this provision as is in the draft proclamation.

## **Article 46**

### **Investigation of an Organization**

Noting that the power vested with the Ministry with regards to investigation under this provision are similar to those that it has been granted under article 42 of the draft proclamation and noting that sub-article 2 is not organically linked to the proceeding provision and that this sub-article deals with both the suspension of an association's personnel as well as the association itself, it has been agreed to;

- a. Harmonize this article with article 42 – power of the Ministry.
- b. Redraft sub-article 2 as two separate sub-articles – one catering for the association's personnel and the other for the association itself.
- c. Apply the argument reasoning and agreement reached on article 42 as it also apply to this provision.
- d. 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 under this provision thus removing the need for a provision dealing with suspension in this article.
- e. Redraft the entire provision taking into consideration the aforementioned points.

## **Article 47**

### **Inspectors and Auditors**

As noted in the discussion of article 42 of the draft legislation, it has been agreed to;

- a. Merge this provision with article 42.
- b. Adhere to the legal principle of sufficient and probable cause in order to warrant the sudden inspection and audit of an NGO or association.
- c. Delete article 47 (3) (2) which authorizes inspectors and auditors to enquire any person alone or before a witness because it will call for the need for legal council in such circumstances further complicating the sub-article, therefore it is better to delete this sub-article as it is not necessary.

## **Article 48**

### **Dissolution and Cancellation**

Noting that this provision along with the next one dealing with suspension of NGOs or associations (article 49) as they currently stand in the draft legislation are the most controversial and contentious and have thus become a major area and point of difference within the TG and further noting that they involve issues that need policy decision by the competent authorities and can not be resolved at the working group level therefore the compelling need to treat both provisions together as they are interconnected in detail highlighting the areas and/or points on which agreement has been reached and those on which agreement has not been reached and finally noting that these provisions have been poorly drafted and need redrafting, it has been agreed to;

- a. Clearly define the grounds for dissolution and cancellation along with that of suspension and clearly state that it should not be frivolous as those mentioned in article 48(2) (failure to submit report or information) but should apply to only grave and serious cases.
- b. Include the grounds warranting dissolution and cancellation, which should be offences of a very grave and serious nature or repeated violation of the law.
- c. Include the need for credible evidence proving that an offence of a very grave and serious nature or repeated violation of the law has been committed.
- d. In this regard to consult and consider the best practice of other countries.
- e. Clearly state that dissolution and cancellation will be considered only when serious and blatant violations have occurred and then only if the association has been given an opportunity to correct it's behavior.

- f. State that before dissolution or cancellation is considered the MOJ will 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 violations.
- g. It is only after exhausting this advisory and corrective measure, that dissolution and cancellation can take place, in which case an administrative decision and action can be taken by the MOJ.
- h. Associations have right of judicial appeal from the decision of the MOJ to dissolve and cancel the association and termination should not be effective until the appeal is completed or the time of appeal has lapsed.
- i. Clearly state that the final decision on dissolution and cancellation as per article 48(2) should lie with a competent court of law.
- j. Clearly indicate that there is no difference of opinion on the issue that the administrative decision of MOJ to dissolve and cancel an association must be appealable to a court of law and to this effect clearly and explicitly state in the draft legislation this right of appeal.
- k. Clearly state that there is a difference of opinion on the issue of dissolution and cancellation of an association. In this regard the two opinions and/or positions are:
  - (i) 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.
  - (ii) The final decision on the dissolution and cancellation of an association lies with the MOJ.
- l. Redraft article 48 taking into consideration and including the aforementioned points.

## **Article 49**

### **Suspension**

Noting that the fundamental issues relating to dissolution and cancellation of associations equally apply to also suspension of an association, it has been agreed to;

- a. Treat both provisions together.
- b. State that there should be serious and grave grounds warranting suspension.
- c. State that there should be a procedure for corrective measure taken by MOJ before suspension.

- d. Consider the opinion and comment forwarded by the representatives of the NGO/CSO representatives within the TG which states that the Ministry, shall, within 48 hours from his 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 new Board or Executive Committee members are elected in accordance with article 46(6) of the draft legislation. And if the court approves the Ministry's request for dissolution, the association shall be dissolved and its assets liquidated in accordance with article 50 of the draft legislation.
- e. Reposition article 49 dealing with suspension to come before article 48 dealing with dissolution and cancellation, because the result of suspension could lead to dissolution and cancellation.

## **Article 50**

### **Liquidation**

Noting that there are existing relevant provisions within the Civil Code dealing with issues of liquidation of associations and further noting that there are existing relevant provisions within the commercial code dealing with liabilities of liquidators and the protection of creditors right and noting that the provisions dealing with liquidation in the draft legislation have drafting problems, it has been agreed to;

- a. State that with regards to liquidation of associations, the Civil Code article 463 – 467 shall apply Mutatis Mutandis.
- b. Delete article 50 (3) because if an association is in the process of liquidation, it cannot hold meetings unrelated to the liquidation process. Therefore there is no need for the Ministry to order associations to hold meetings, which is unrelated to the pecuniary liquidation.

## **Article 51**

### **Liquidators**

The same agreement reached on article 50 above equally applies to this provision. Therefore it has been agreed to;

- Treat this provision accordingly.

## **Article 52**

### **Powers and Duties of Liquidators**

Noting that the same agreement reached on article 51 above equally applies to this provision as well and noting the existence of relevant and applicable provisions within the Civil Procedure Code and Commercial Code dealing with modalities of determining the order of precedence of payment to third parties,

Accordingly it has been agreed that;

- This shall be determined as and per these provisions and to this effect the relevant provisions will be replicated and included in article 52(1) of the draft proclamation.

## **Article 53**

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

Noting that there are existing and relevant provisions within the Commercial Code dealing with the protection of creditor's rights, it has been agreed to;

- State that relevant provisions of the Commercial Code shall apply Mutatis Mutandis.

## **Article 54**

### **Liability of Liquidator**

Noting that the agreement reached on article 50, 51 and 52 above equally apply to this provision and noting that this provision should be placed with the other provisions that deal with liquidation of an association and is thus misplaced, it has been agreed to;

- Reposition this provision and bring it right after article 52 and article 53 dealing with protection of creditor's to follow as the final provision of chapter seven of the draft proclamation.

## **Article 55**

### **Income Generating Activities**

Noting that this provision is of great importance to the NGO/CSO community in Ethiopia and that it is a welcome, positive and progressive development in the legislation process, further noting the difficulties its application and interpretation can cause and also noting that its rationale and raison d'être can easily be misunderstood and the possibility of abuse and therefore the need to treat and consider this provision in more detail and with the requisite caution, it has been agreed that;

- a. Engagement in income generating activity must be related to the mission of the NGOs/ or associations.
- b. All income derived from income generating activities must be ploughed back to expand the activities envisaged in its memorandum of association.
- c. The amount of income that can be generated by such activities must be limited and should not exceed one-third of the total income of the association.
- d. Prior to engaging in income generating activity, the association shall ensure that the activity will not hamper the mission or the memorandum of association of the association and the interest of beneficiaries and shall be responsible for its action thereof.
- e. Engagement in income generating activity will be limited to only certain kind or type of NGOs or associations e.g. Public Benefit Organizations (PBOs).
- f. Engagement in income generating activity will be limited to only selected areas or fields of activities e.g. health, education etc.
- g. In order to protect the interest of the association and beneficiaries, and in order to protect the rights of third parties, an association or NGO, which engages in income generating activities, must do so by establishing a separate legal entity with its own legal personality and all other relevant laws shall apply to it Mutatis Mutandis.
- h. An association or NGO, which engages in income generating activity, shall pay tax as any other business entity unless exempted by law.
- i. Income derived from income generating activity by a Public Benefit Organization that fully ploughs – back such income into the NGO or association shall not be considered as income and shall be treated as such for income tax purpose.
- j. An NGO or association that engages in income generating activity shall inform the Ministry and the Ministry shall transmit all relevant information and report to the competent tax authority.

- k. An NGO or association that engages in income generating activity with out notifying the Ministry, shall in addition to administrative measure, be criminally liable for such failure of notification.
- l. An NGO or association that engages in income generating activity that causes market distortion and abuse of its intended purpose, shall, in addition to administrative measure, be criminally liable for such an offence.
- m. Associations or NGOs whose beneficiaries are the handicapped, the blind, orphans, children, women, and vulnerable sectors of the society (indicative not exhaustive) shall engage in income generating activities.
- n. Details of the application of income generating activities shall be governed by a directive or regulation to be issued following this legislation or proclamation.
- o. Consult and consider the best practice of other countries.
- p. Take into consideration and account the aforementioned points and revisit this provision and redraft it accordingly.

## **Article 56**

### **Income Tax**

Noting the importance of the existence of this provision in the draft legislation, it has been agreed to;

- Retain and leave this provision as is in the draft proclamation.

## **Article 57**

### **Duty Free Rights**

Noting the importance of the existence of this provision in the draft legislation, it has been agreed to;

- Retain and leave this provision as is in the draft proclamation.

## **Article 58**

### **Right of Beneficiaries**

Noting the need for associations to be transparent in their activity and noting the need of encouraging them to enlist the participation of the public and specifically beneficiaries in the conduct of their activities and further noting the ambiguity that this provision contains as it stands in the draft and therefore the need to refine and redraft this provision, it has been agreed to;

- a. Delete the provision that states an association must get the consent of the community prior to commencing work as stated in article 58(2) because it gives the implication that if consent is withheld or delayed the NGO or association cannot function and be operational.
- b. State 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 objective of its activity and to that end may discuss with the community.
- c. Redraft article 58(3) in a way that clearly states that informing and awareness creation is purely recommendatory in nature and is not compulsory or mandatory.
- d. Clearly state that the condition for facilitating participation of groups concerned in the activity of an NGO or association shall be the sole prerogative of the concerned NGO or association and shall be decided and determined by it and not by the representatives of the victims of the problem as stated in article 58 (3).
- e. Redraft article 58(3) in a way that clearly indicates that the condition of participation e.g. at policy level, at decision making level, at fund raising campaign level etc shall be determined by the NGO or association and not by the representatives of the victim of the problem. Therefore implying the NGO or association has the final say in the determination of the nature of participation.
- f. Redraft this provision taking into consideration and account the aforementioned points.

## **Article 59**

### **Appeal**

Noting that this provision provides NGOs or associations the right of administrative appeal in cases where they have been denied registration or renewal of certificate of registration or where their permit has been cancelled or suspended and noting the need for having detailed provision relating to appeal as stated in article 59 – 63 of the draft proclamation, it has been agreed to;

- a. Include a new sub-article 3 that clearly states that administrative decision shall be appeal able to a court of law.
- b. Redraft article 59(3) in a way that clearly states that an NGO or association that is aggrieved or is not satisfied by the final administrative decision of the Minister shall have recourse to judicial appeal.
- c. Redraft this provision taking into consideration and account the aforementioned points.

## **Article 60**

### **Appeal Investigating Committee**

Noting the need for the existence of an appeal investigating committee in the draft legislation, it has been agreed to;

- Retain this provision and leave it as is.

## **Article 61**

### **Members of the Committee**

Noting the need for broad membership of the appeal investigating committee and noting the inclusion of NGOs or associations through representatives of Union of Organizations as stated in article 61(2) of the draft proclamation as a very welcome development and further noting the need to leave room for further expansion of membership and for balanced representation, it has been agreed to;

- a. Include 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.
- b. Consider the suggestion that of instead of the MOJ having two representatives as stated in article 61(1), with the view of fair representation, add one more representative to the NGO community and make their total representatives a total of three.
- c. Consider the suggestion that if the rationale for having two representatives is because one serves as a secretary of the committee, redraft this provision in a way which clearly states that the committee will have an ex-officio non-voting member that shall serve as the secretary of the committee and shall be represented by the MOJ.

- d. Redraft this provision taking into consideration and account the aforementioned points.

## **Article 62**

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

Noting that the powers and duties of the committee are purely of a recommendatory nature, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Article 63**

### **Meeting**

Noting that the meeting procedure of the committee is in line with established practice, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Article 64**

### **Establishment – Advisory Board**

Noting the need and importance of this provision in the draft proclamation because it clearly indicates the government's commitment to seriously and constructively engage with the NGO/CSO community even at policy making level and further noting that this can be helpful to improve the overall policy and legal environment in which they operate, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Article 65**

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

Noting the need for broad membership and the inclusion of the NGO/CSO community as represented by the Union of Organization as stated in article 65(2) in the Advisory Board as a very positive and welcome development and further noting the need for making provision for expansion and diversification of the membership and composition of the Advisory Board, it has been agreed to;

- a. Include a new sub-article (12), which states that as deemed necessary the Advisory Board may have additional members.
- b. Delete article 65(5) and (7) respectively that deals with representative of Security, Nationality and Immigration Authority and representative of the Environmental Protection Agency and replace them with Ministry of Federal Affairs and Ministry of Capacity Building respectively, because both are more relevant to the activities of NGOs/CSOs and can thus play a more important role in the Advisory Committee.
- c. 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, may become members of the Advisory Board.
- d. Redraft this provision considering and taking into account the aforementioned points.

## **Article 66**

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

Noting the need that the Advisory Board should have the requisite powers and duties as provided for in this provision, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Article 67**

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

Noting that the meeting procedures outlined in this provision is in line with established practice and noting the need for the inclusion of this provision, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Article 68**

### **Responsibilities and Functions of the Auditor**

Noting the poor drafting of this provision, it has been agreed to;

- a. Redraft the English version of article 68(1) and (2) because it is defective and ambiguous.

- b. Delete article 68(3) and replace it by a provision that states the designation and functions of the auditor shall be determined by a directive to be issued by the Minister.
- c. Redraft this provision taking into consideration and account the aforementioned points.

## **Article 69**

### **Members of the Management Board**

Noting that the NGO/CSO community had advocated for the inclusion of this provision in the draft legislation with the view of putting in place a mechanism that would help control against corruption and abuse of power/authority and noting that the inclusion of this provision can demonstrate the commitment of the NGO/CSO community for introspection, self regulation and peer review and of upholding the code of conduct they have adopted, and further noting the need to clearly indicate that violation of this provision will not be taken lightly but will be treated severely, it has been agreed to,

- a. Maintain this provision in the draft legislation.
- b. Include a provision that clearly states that the limitation and prohibition applies only to key organs of an NGO or association, which wield wide powers, such as Executive Committee members, Board Management members or manager, thus need to be protected from abuse.
- c. Include a provision that clearly states that violation of this provision is a criminal liability.
- d. Link the penal sanction in case of violation of this provision with article 74 of the draft legislation dealing with penalty and other relevant Penal Code provisions.
- e. Cite the relevant and applicable penal provision of the Penal Code if the penal sanction is more severe, if not cite another relevant and applicable provision with more severe penal sanction.
- f. Redraft this provision considering and taking into account the aforementioned points.

## **Article 70**

### **Organization Established as Endowment**

Noting the need to draw a distinction between the laws governing associations and that of endowment and trust and noting the need to clearly state that this draft legislation applies to only associations, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Article 71**

### **Union of Organization**

Noting that the NGO/CSO community had advocated for the inclusion of this provision in the draft proclamation and noting the need for the existence of a provision that can facilitate and coordinate the various activities of NGOs or associations, especially issues related to exchange of information, enactment and enforcement of code of conduct of NGOs or associations, further noting the need to expand the area and list of activities to be conducted by the Union of Organization and further noting the need to redraft this provision, it has been agreed to,

- a. Retain this provision.
- b. Include in the list from (a)-(e) a new sub-article (f) dealing with capacity building and (g) dealing with enhancing the role and participation of NGOs or associations in the overall socio-economic development of the country.
- c. Divide this provision into two sub-articles. The first stating that NGOs or associations may establish a union of organization – umbrella organization. The second stating that the objective and list of activity of the union of organization.
- d. Redraft this provision taking into consideration and account the aforementioned points.

## **Article 72**

### **Applicability of other Laws**

Noting the need for the existence of a provision, which states that matters not covered by this draft proclamation shall be covered by relevant provisions of the civil code – indicating which law shall apply incases where this draft proclamation is silent, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Article 73**

### **Transitory Provisions**

Noting the need for having a transitory provision in the draft proclamation, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Article 74**

### **Penalty**

Noting the shortcoming, the severity of penalty, lack of discretion and latitude of this provision as it stands in the draft proclamation, and further noting the need to revisit and redraft this provision, it has been agreed to,

- a. Review the entire provision with the purpose of lightening or reducing the severe penalty prescribed in the draft provision.
- b. Review this provision in light and in line with the Revised Penal Code.
- c. Cite relevant and applicable penal provisions from the Penal Code relating to specific crimes such as breach of trust and embezzlement of money and property of associations.
- d. Divide the violations into grave cases or offences and ordinary case or offences and indicate the penalty for each violation.
- e. Revise the role of this provision and include to this end a sub-article that provides for discretionary use of penalty and this to include warning or reasonable fine for minor contraventions of the draft proclamation such as failure to meet reporting date or to communicate information.

## **Article 75**

### **Powers to issue Regulation and Directive**

Noting that this is a standard provision and the need for having a provision dealing with the powers to issue regulations and directives in the draft proclamation, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

**Article 76**  
**Effective Date**

Noting that this is a standard provision and the need for having a provision, which states the date on which the proclamation will enter into force in the draft proclamation, it has been agreed to;

- Retain this provision and leave it as is in the draft proclamation.

## **Conclusion**

The task-group (TG) delegated to follow up the work on the draft NGO/CSO legislation with the drafting team of the Ministry of Justice had held six long meetings and/or sitting each lasting an average of five hours.

The first two meetings focused on introducing and giving a briefing on the observations and recommendations of the NGO/CSO community on the Ministry of Justice's current Draft NGO Registration and Regulation Proclamation.

The objective of these meetings was to put across the constitutional and legal principles that ought to underpin a democratic legal framework for NGO/CSO registration and operation and to underscore the constitutional and legal foundation on which the draft NGO/CSO Proclamation of Ethiopia should be predicated.

In these sessions basic and fundamental issues regarding freedom of association as enshrined in the constitution of the FDRE, its meaning and relevance and its place in the draft legislation was discussed in-depth and a common understanding was reached on the need to incorporate this fundamental constitutional principle as stipulated in article 31 of the constitution in the preamble of the draft legislation.

It was agreed that this would be the benchmark or milestone against which all the other substantive provisions of the draft proclamation would be treated and analyzed. Indeed the very yardstick against which they will be measured.

The simple litmus test being whether the substantive provisions, which have been incorporated in the draft proclamation, enable or disable the exercise of this basic and inalienable right. It was against this backdrop that provisions that deal with the powers vested in the Ministry of Justice had been examined.

These include supervision (article 42), investigation (article 46), inspection (article 47), dissolution and cancellation (article 48) and suspension (article 49) of NGOs.

In this regard, while the NGO/CSO representatives group aired out their apprehension and anxiety that the implementation of these provisions can cause and more importantly they clearly stated that it can easily be susceptible to abuse and thus led to a violation of a constitutional protected right.

Stressing the repercussions of the unchecked and unlimited power vested in the Ministry of Justice, they clearly and strongly advocated for the need of putting in place a provision and mechanism whereby the administrative decisions and/or excesses of the Ministry of Justice could be checked and countered by way of judicial review and rendered less harmful and disabling.

In this regard the need for judicial review on administrative decisions affecting the suspension, dissolution and cancellation of an NGO had been underscored.

On the other hand the Ministry of Justice drafting team justified the need for these provisions and of the need of empowering the Ministry of Justice on the ground of protecting public interest.

It was argued that as custodians and protectors of public interest, the Ministry of Justice has been empowered by its establishing law to play this crucial role.

The discussion on the definition, interpretation and application of this illusive and controversial concept further complicated the issue highlighting the complexity of this concept.

The lengthy discussions conducted on this issue and the different positions and/or opinions expressed by both sides, brought to the fore, without exaggeration the irreconcilable difference we have on this matter.

It was precisely for this reason and being fully cognizant that an understanding or common ground cannot be reached on this key issue, that it was agreed the issue, stating each position clearly, should be presented to higher authorities and/or competent bodies for a policy decision on this crucial issue.

Having broadly and generally reviewed areas and positions that pose difficulties and having identified these provisions as disabling provisions, the group continued work focusing on provision that do not fall under this category.

In its consecutive sessions, the task group (TG) started deliberating on all the provisions contained in the draft legislation.

This exercise involved going over the draft legislation article by article and exchanging views on ways and means of improving some provisions, both in substance and in drafting, and noting the additional points that have been suggested in each provision.

This approach and method of work had been applied throughout the entire sessions commencing with title of the draft proclamation and going up to article 76, the last article of the draft legislation, and the conclusion of the preliminary overall review of the draft legislation.

It should be noted that the Task-Group had a lively debate on most of the provisions of the draft proclamation and has positively contributed towards the improvement and enrichment of the substance, content and form of each provision.

With the exception to the few issues that needed policy decisions and could not be agreed upon by members of the Task-Group, provisions of the draft proclamation that were open to interpretation and that needed to be clarified in order to avoid ambiguity have been highlighted and most of our comments and observations on all of those issues as contained in our report on Observations and Recommendations of the NGO/CSO

Community on the Ministry of Justice's current draft NGO Registration and Regulation Proclamation of December 2003, have been noted and it has been agreed that all the points raised in this regard will be considered and will be taken on board during the final drafting of the proclamation.

A few words on what is meant by "Noting" and "has been agreed" as has frequently been used and applied in this report.

In the treatment of the discussions and deliberations of each provision, the order of precedence has been to first note the points or issues that the specific provision addresses, to observe and analyze its component parts and its rationale and to then consider if it has issues relating to drafting that could contribute to the improvement of the provision. This entire exercise or undertaking falls under the process of "noting"

The noting process is also followed by literally noting the points that have been discussed and deliberated upon – as was done in the Task-Group by Ato Nikodimos Getahun from the MOJ codification team and Ato Bekure Herouy from the NGO/CSO community representatives group, representing CRDA.

The term "Agreement has been reached" refers to following the noting process, the issue or points on which an understanding or consensus has been reached, the issue or points to be considered and taken into account when revisiting and redrafting the specific provision.

As used and applied in this report the term "Agreement has been reached" does not imply absence of disagreement or difference of opinion or position because even in instances where differences have been expressed and put forward, agreement has been reached as to how to treat the specific provision and move forward with recommendations.

Finally a few words on the working environment of the draft NGO legislation team as a whole. The working environment and spirit was one of cooperation and accommodation. At times it was marked by highly charged, heated and animated debate geared towards convincing the unconvinced and winning the argument. At times it was highly academic and high-flown and at times practical and down to earth and at times it had its own memorable moments of humor.

Most remarkably there was a team spirit and a keen awareness of the responsibility bestowed upon us and the common desire and determination to fulfill our duties by discharging our functions to the best of our abilities. Our entire deliberation has been guided by this shared vision and mission.

This experience, perhaps apart from being unprecedented, is indeed a work spirit and philosophy that is worthy of emulation by other executive branches of the government who might be ready and willing to sit down and work together with NGOs/CSOs with a shared vision, mission and purpose on matters which could be of mutual interest.

At the end of this exercise it had been agreed for the Ministry of Justice codification team to compile and incorporate the opinions, comments and observations made in the course of our deliberation and come up with a zero-draft if possible by the end of April or at the latest in mid-May.

It was further agreed that the zero-draft will be prepared in Amharic and we will continue working on the Amharic version until we come up with an acceptable and workable draft NGO legislation and drafting and translation work will follow latter.

We will closely check the zero-draft to be presented to us for our comments with the view of ensuring that it reflects the spirit and letter of all the points and issues on which agreement and/or consensus has been reached on and have accordingly been incorporated in the zero-draft.

Discussion on how to react or what to do if the zero-draft does not comply with the spirit and agreements and/or consensus reached and what to do pending submission of the zero-draft would be premature at this stage.

Better to wait and see and push for expediting the conclusion of the work on the zero-draft in case of unnecessary delay.

Finally, I highly regret to conclude this report on a sad note. In the process of the preparation of this report, one of the most prominent, distinguished, and colossal member of the Task-Group, Ato Kiffle Wedajo passed away.

His invaluable wisdom, advice and experience will not only be missed by the task- group which holds him in high esteem but is also undoubtedly a great loss to the entire nation and the people of Ethiopia whom he devotedly and indefatigably served in various capacities for many decades up to the last days of his life.

Ato Abdul Mohammed, a colleague and friend of Ato Kifle in his article entitled “Tribute to a statesman” eloquently states that “He (Ato Kifle) held himself to the highest standards, mulling over every sentence he committed to writing, painstakingly considering every implication of each judgment he made. No contingency would escape him, as no possible repercussion of his words would pass with out consideration. The result was that he was an elegant and precise writer”.

Those of us who have been working with Ato Kifle, in the NGO/CSO draft legislation codification work are living witnesses and can unwaveringly and with out hesitation testify to and fully conquer with Ato Abdul’s observation and remark.

We pay tribute to Ato Kifle not only by sharing these observations and remarks alone but by also pledging to finalize the NGO/CSO legislation work so that it can see the light of day at the earliest convenience. And to this end we must move the process forward.

This is a vision and a mission for which he has worked for so hard, and for too long, we should strive to turn his aspiration into reality and once this is done it will only be appropriate and befitting to dedicate this noble, worthy, timely and highly important undertaking to Ato Kifle Wodaje, as this is an undertaking which successive generations will remember as one of the first most comprehensive legislation enacted to enable citizens exercise their basic human and constitutional right to freedom of association.

**Bekure Herouy**  
Legal Consultant  
May 1, 2004