

From Opposition to Proposition

Alternative CSO Proclamation

Prepared by
CSO Legal Framework Consultative Taskforce

PRESENTED FOR PUBLIC DISCUSSION

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**A PROCLAMATION TO PROVIDE FOR THE REGISTRATION AND
OPERATION OF CIVIL SOCIETY ORGANISATIONS**

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

(WORKING DRAFT PREPARED FOR PUBLIC DISCUSSION ONLY)

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

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

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

Whereas it has become necessary for all categories of civil society organizations to have legal personality and the protection of their identities, rights and privileges under the law;

Whereas an enabling institutional arrangement for civil society organizations to mainstream their efforts with ease into the development arena has been found an important linking pin;

Whereas it is necessary to coordinate and oversee the activities of civil society organizations

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

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as “CSOs Proclamation No....”

2. Definitions

In this Proclamation

- 1) “Organization” means civil society organization; which is a voluntary, not-for-profit, non-governmental and autonomous institution including but not limited to:
 - a) Third party serving or public benefit organizations, foundations, associations, charities, endowments, trusts and non-governmental organizations engaged in activities such as; care and welfare, development, provision of social and economic services, environmental protection, research and advocacy, science and art, promotion of good governance and human rights.
 - b) Membership serving or membership benefit organizations set up primarily to cater for the needs and interests of their members
 - c) Membership based but mutual benefit organizations with the impact of their engagement having community or society wide benefit.
- 2) “Minister” or “Ministry” means the Minister and Ministry of Justice respectively and it includes any other public authority duly delegated or assigned by the Ministry.
- 3) “Region” means the member states of the Federal Democratic Republic of Ethiopia as provided under Article 47 of the Constitution of the Federal Democratic Republic of Ethiopia. For the purposes of this Proclamation it also includes the city administrations of Addis Ababa and Dire Dawa.
- 4) “Memorandum of Association” means the document drawn up by founding members by which an organization is established and governed. It includes the articles of association (or statutes) which form an integral part of the memorandum of association.
- 5) “Person” means both natural person and legal persons that are endowed with legal personality.

3. Scope of Application

- 1) Without prejudice to Sub-Article (2) and (3) of this Article, this Proclamation shall be applicable to all organizations, whose purpose is to operate in more than one region.
- 2) Until such time as regions issue relevant laws, organizations whose purpose is to operate only in one region shall be governed and registered by the Regional Justice Bureaus in accordance with this Proclamation.
- 3) This Proclamation shall not apply to civil society actors such as trade unions, political parties, and religious institutions primarily devoted to religious worship, and co-operatives which are governed by their own respective laws. This proclamation also does not apply to institutions formed with a view to defending the financial interests of their members.

- 4) Notwithstanding the provisions of this Proclamation, every person has the right to freedom of association for any lawful cause with out being registered. Therefore, this Proclamation shall apply only when persons who set up an organization seek legal recognition and registration for their organization.

PART TWO

ESTABLISHMENT AND REGISTRATION OF ORGANIZATIONS

SECTION ONE

Establishment and Its Legal Effect

4. Establishment

Any two or more persons have the right to form an organization in accordance with this Proclamation. This right equally applies to legal persons with the right to form associations of organizations and/or associations of umbrella organizations being affirmed.

5. Acquiring Legal Personality

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

6. Organizations Established by Youth

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

7. Special Support

- 1) Government shall provide special support and attention for organizations established by women so as to enable them to participate on the basis of equality with men in political, social and economic life.
- 2) Government shall provide special support and attention for organizations established by people with disabilities and elders with a view to addressing their special needs and ensuring equal treatment.

¹ Most relevant provisions of the Civil Code referred to in this alternative draft legislation are annexed for an easy reference. (Annex II)

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

SECTION TWO

Registration

8. Requirement of Registration

- 1) An organization that wishes to be registered shall not commence on regular activities other than those necessary to effect the establishment thereof unless and until it is registered and a certificate of registration has been issued in accordance with this Proclamation.
- 2) Any person acting on behalf of or in the name of an organization not so registered shall be jointly and severally liable with the organization for any such acts.

9. Application for Registration

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

10. Grant of Registration

- 1) The Ministry shall in all cases register and grant certificate of registration within ten (10) working days of the receipt of the application, except in cases where the intended purpose of the organization is unlawful or immoral.
- 2) If the Ministry has reasons to deny registration as per sub-article (1) of this Article or if the Ministry finds any defects in the application for registration which needs to be rectified, it shall advise to the founders in writing as to the reasons for denial or as to the relevant defects and such remedial measures in respect thereof.
- 3) If the certificate of registration is not issued or if the Ministry has not given written explanation within thirty (30) days as provided under sub-article (2) of this Article, the organization shall be considered to have been registered and the Ministry shall issue the certificate with no prior condition whatsoever.

11. Certificate of Registration

- 1) The certificate of registration shall state the name of the organization, the date and number of registration, its validity period and a statement that the organization is granted legal personality in accordance with this Proclamation. It shall bear the seal and signature of the relevant official of the Ministry.
- 2) The certificate of registration shall be valid for the period an organization is established for, as provided in the memorandum of association. If an organization is established for an indefinite period of time, the certificate of registration shall accordingly be valid for an indefinite period of time.

- 3) The certificate of registration shall at all times be prominently displayed at the head office of the organization.
- 4) The certificate of registration shall be returned to the Ministry if the organization is dissolved for any reason. The organization shall also notify the Ministry the loss or destruction of the certificate of registration.

12. Public Record of Registration

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

PART THREE

STRUCTURE AND GOVERNANCE

SECTION ONE

Structure

13. General

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

14. Memorandum of Association

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

15. Character of the Supreme Organ

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

SECTION TWO

Membership Organizations

Governance and Management

16. General

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

17. Governing Board

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

18. Membership

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

SECTION THREE

Non-membership Organization

Governance and Management

19. General

- 1) The supreme authority of the organization shall be vested in a governing board which shall have not less than five members
- 2) Up to one half (1/2) of the governing board members may be elected from among the founding members.
- 3) Without prejudice to the powers and functions reserved to the supreme organ, the organization may have a Council of the founding members and an executive (management) organ.
- 4) Where the organization has a council of founding members and an executive (management) organ, the powers, functions and responsibilities of such organs shall be provided in the Memorandum of Association.
- 5) If the Memorandum of Association is silent about the management of an organization, the provisions of Article 426 to 435 of the Civil Code shall apply, *mutatis mutandis*, in respect of the management of the organization.

20. Governing Board

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

21. Founding Members

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

PART FOUR

REPORT AND SUPERVISION

22. General

- 1) The Ministry shall supervise the activities of organizations in accordance with this Proclamation and other relevant laws.³
- 2) The provisions of Article 468 to 479 of the Civil Code shall apply, *mutatis mutandis*, in respect of the supervision of organizations.

23. Auditors and Accounts

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

24. Reports

- 1) The Ministry may ask organizations to submit annual financial and activity reports as approved by the supreme organ of the organization.
- 2) If the Ministry has sufficient grounds casting doubt as to the authenticity of such reports, it may order a re-examination of the accounts by another registered external auditor.

PART FIVE

DISSOLUTION AND LIQUIDATION

25. Principle

- 1) Any organization may only be dissolved:

³ The civil society sector recommends the establishment of an independent office for the over all coordination of both registration and operational matters of CSOs serving as a focal agency for CSOs as a one stop shop. In order to get the most out of CSOs by way of values that they may add to development and socio-political assets on one hand and given the need for an agency that supercedes operational matters, an autonomous Office of CSOs under the aegis of the Office of the Prime Minister has become necessary to coordinate and promote CSO activities, to engage in regulatory functions pertaining to CSO operations and to undertake the necessary oversight on a regular basis. In as much as CSO interaction emanates from public will and becomes viable assuming public trust, the Office shall be overseen by a board of directors of equal representation from the public and CSO sectors. Specific responsibilities of the Board shall include smoothening relations between government and CSOs, helping improve the functions and effectiveness of the voluntary sector, promoting voluntarism and partnership for development, and a sounding board of feedback from government, ensuring good practice and accountability in the sector, regulating and making decisions on operational matters and overseeing the management of the office.

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

26. Competent Court

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

27. Suspension

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

28. Liquidation

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

**PART SIX
FOREIGN ORGANIZATIONS**

29. Applicable Law

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

30. Application for Registration

- 1) Foreign organizations who wish to undertake activities in Ethiopia, can apply for registration by submitting the following documents and information to the Ministry:
 - a) Certificate of registration issued by authorized agency from its country of origin
 - b) Resolution by the competent organ of the organization to undertake activities in Ethiopia

- c) The governing documents of the organization
 - d) A letter of appointment or an authorization letter or a power of attorney given to the person representing the organization in Ethiopia.
- 2) Whenever the representative in Ethiopia is changed, the organization shall inform the Ministry in writing.

31. Type of Organization

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

32. International or regional CSOs whose Head Office is situated in Ethiopia

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

PART SEVEN

MISCELLANEOUS PROVISIONS

SECTION ONE

Income Generating Activities and Tax

33. Permission of Income generating activities

- 1) Any organization may undertake income generating economic activities in addition to resources it mobilizes in a form of aid funding.
- 2) When the said income generating economic activity requires a separate trade or professional license, the organization shall have such trade or professional license.
- 3) The organization may either directly carry on an income generating activity or undertake such income generating activity through a subsidiary (affiliate) established for this purpose.

- 4) Any and all revenues derived from income generating activities shall solely be used to finance the objectives of the organization and it shall under no circumstance be paid or divided among the members.

34. Tax Deductions and Exemptions

- 1) The income generating activities and all other transactions of all public benefit CSOs is fully exempt from income tax, profit tax, sales tax, value added tax, capital gains tax, asset transfer tax and stamp duties.
- 2) No tax shall be levied on donations to all CSOs and on income raised through various fund raising activities.
- 3) CSOs are exempt from custom duties for capital goods, relief supplies and other items that are required to support their not-for-profit objectives.
- 4) Donors shall be entitled to income tax deductions with respect to donations to all CSOs.
- 5) Any and all tax benefits are applicable only to organizations registered as per this proclamation.

35. Government funding of CSOs

- 1) In the furtherance of the country's development ends and the democratization process, government shall engage CSOs via direct grants, matching funds, contract provisions and joint ventures.
- 2) CSOs engaged in public benefit activities shall be entitled to land free of lease charges and exempt from such charges as land and building tax. Land provided in such a manner shall not be sold or traded and its use shall remain for the purposes for which it was granted unless and otherwise a change of land use is authorized by the relevant government agency.

SECTION TWO

Conversion and Amalgamation of Organizations

36. Merger

- 1) Any two or more organizations may merge in accordance with the decision by the supreme organs of the organizations. Such an amalgamation may either be a merger by take over or a merger by forming a new organization.
- 2) The rights and duties of the merged organizations shall be transferred to the newly established organization or to the organization taking over.
- 3) The deed of merger together with the decisions of the supreme organs of the organizations shall be submitted to the Ministry for approval.
- 4) The Ministry shall publish a public notice of the merger and ensure that the right of third parties is duly protected before approving the merger.

- 5) The merger shall be considered complete when it is approved by the Ministry. The certificate of registration of the organization that ceases to exist shall be returned to the Ministry.

37. Split of Organizations

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

38. Conversion of a foreign organization into a local organization

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

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

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

SECTION THREE

Appeal

40. Administrative Appeal to the Minister

- 1) Any denial of registration under Article 10 hereof or any decision of the Ministry in respect of supervision is subject to appeal to the Minister by any

person affected by the decision within sixty (60) days of the receipt of such denial or order.

- 2) Where the decision of the Ministry is not given in writing, the appeal can be made at any time.

41. Decision on the appeal

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

42. Appeal to Court

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

SECTION FOUR

Penalty Provisions

43. General

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

SECTION FIVE

Transitory Provisions

44. Organizations registered under the law in force now

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

Proclamation. The Ministry shall accomplish this within six months after the effective date of this Proclamation

45. Repealed Laws

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

46. Effective Date

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

Done at Addis Ababa on thisday of2004

Annex I

Explanatory Notes

1. Background

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

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

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

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

2. Methodology

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

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

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

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

Annex II
Relevant Provisions of the Civil Code⁴

Art. 415. – *Associates.*

The association consists of its founders and of the members who have joined the association.

Art. 416. – *New members.*

Without prejudice to any provision to the contrary, the association may receive new members.

Art. 417. – *Promise to join an association.*

A promise to join an association shall be of no effect.

Art. 418. – *Equality of associates.*

Without prejudice to any provision to the contrary in the memorandum of association or in the statutes, all associates shall have equal rights.

Art. 419. – *Personal character of the capacity of associate.*

- (1) The capacity of associate is inalienable.
- (2) It shall not pass to the heirs of the associate.
- (3) The provisions of this Article shall apply notwithstanding any provision to the contrary in the memorandum of association or the statutes.

Art. 420. – *Exercise of the rights of an associate. – Representation.*

Without prejudice to any provision to the contrary in the memorandum of association or in the statutes, an associate may not exercise his rights as an associate through a third person.

Art. 421. – *Payment of subscriptions.*

An associate may not exercise his rights as an associate unless he has previously paid the subscriptions fallen due which he owes to the association.

Art. 422. – *Subscriptions.*

- (1) Without prejudice to any provision to the contrary, the membership subscription shall be paid during the first quarter of each year.
- (2) An action may only be brought against an associate for the payment of his subscription for the current year and preceding year.

Art. 423. – *Right to withdraw from the association.*

- (1) An associate may at any time withdraw from the association, notwithstanding any provision to the contrary.

⁴ Most relevant provisions of the Ethiopian Civil Code which are referred to in this alternative draft legislation are annexed herewith for an easy reference.

- (2) An associate who withdraws from the association shall pay the subscription which have fallen due and the subscriptions of the current year.

Art. 424. – *Exclusion of an associate.*

- (1) An associate may be expelled from the association in the cases and in the manner provided for in the memorandum of association or in the statutes.
- (2) In addition to those cases, he may also be expelled from the association for good cause by the general meeting.
- (3) The associate who has been expelled may, within three months after he has been informed of his expulsion, appeal to the court against such decision on the ground that the expulsion is not justified.

Art. 425. – *The association does not represent the associates.*

The associates shall not be liable to third parties as a consequence of the activities of the association.

Art. 426. – *Appointment of directors.*

- (1) The association shall be managed by one or more directors, appointed in conformity with the memorandum of association or the statutes.
- (2) Unless otherwise provided, they shall be appointed by the general meeting.

Art. 427. – *Directors must be members.*

Without prejudice to any provision to the contrary, the directors shall be appointed from among the members of the association.

Art. 428. – *Board of management.*

- (1) When there are several directors, they shall form a board of management.
- (2) Without prejudice to any provision to the contrary, the decisions concerning the association shall be taken by the board which shall decide by a majority of its members present or represented.
- (3) Those who do not agree with the decision taken by the majority may require that their dissenting opinion be recorded in a minute.

Art. 429. – *Powers of directors. – 1. Law.*

- (1) The directors of an association shall perform all the acts necessary for the management of the association.
- (2) They shall represent the association in judicial and extra-judicial matters.

Art. 430. – *2. Statutes.*

- (1) The statutes may limit the powers of the directors or regulate the manner in which such powers are to be exercised.
- (2) Their provisions may not be set up against third parties unless the statutes have been deposited in the office of associations or it is proved that the third parties were actually aware of such provisions.

Art. 431. – *3. Memorandum of association or general meeting.*

- (1) The provisions whereby the memorandum of association or the general meeting of the association, limit the powers of the directors, or regulate the manner in which such powers are to be exercised, may not be set up against third parties unless it is proved that such third persons were actually aware of those provisions.
- (2) They have as their only sanction the responsibility, in relation to the association, of the director or directors who have contravened them.

Art. 432. – *Provisional director.*

If the persons authorized to act on behalf of the association are not available or are impeded, a provisional director shall be appointed by the court on the application of any interested party.

Art. 433. – *Proof of capacity.*

- (1) The persons authorized to act on behalf of the association may require that a document showing their capacity and powers be delivered to them by the office of associations.
- (2) Such document shall specify, where appropriate, the period for which the powers have been given.

Art. 434. – *Liability of directors.*

The directors of an association shall be liable to the association in accordance with the rules relating to agency (Art. 2179 – 2233).

Art. 435. – *Exclusion from right to vote.*

Notwithstanding any agreement to the contrary, directors may not vote in a general meeting called to approve their accounts or to decide on liabilities incurred by them.

Art. 436. – *Character of supreme organ.*

- (1) The general meeting of the associates is the supreme organ of the association.
- (2) It shall decide on all matters concerning the association which do not fall within the jurisdiction of another organ.

Art. 437. – *Appointment and control of directors.*

- (1) Unless otherwise provided, the general meeting shall appoint the directors, control their activity and approve their accounts.
- (2) It may give directions regarding the management of the association.

Art. 438. – *Dismissal of directors.*

- (1) The general meeting may at any time dismiss the directors without prejudice to their right to the remuneration which has been agreed upon.
- (2) This right of dismissal may neither be restricted nor excluded where the directors are dismissed for good cause, in particular where they have

committed a serious breach of duties or are unable to manage properly the affairs of the association.

Art. 439. – *Admission and expulsion of members.*

- (1) The general meeting shall decide on the admission of new members, or on the expulsion of members of the association.
- (2) The power to admit or to expel members may not be entrusted to the organs of management except under reservation of ratification by the general meeting.

Art. 440. – *Amendment of statutes. - 1. Principle.*

- (1) Without prejudice to any other provision to the contrary, the general meeting may amend the memorandum of association or the statutes of the association.
- (2) The power to amend the memorandum of association or the statutes may not be conferred on any other person or organ.

Art. 441. – *2. Restriction.*

- (1) The unanimous consent of the associates shall be required where the decision to be taken aims at modifying the object of the association or at giving unequal rights to the associates.
- (2) Privileged rights may not be withdrawn from associates except with the consent of such associates.

Art. 442. – *Convocation. - 1. Principle.*

A general meeting shall be convened by the directors in the cases provided for in the memorandum of association or in the statutes and, in cases of urgency, whenever it is in the interest of the association to do so.

Art. 443. – *2. Right of associates.*

- (1) A general meeting shall be convened whenever such number of associates as is fixed by the statutes asks for its convocation.
- (2) If the statutes are silent in this regard, a general meeting shall be convened if one-fifth of the associates so require in writing and specify the purpose of the meeting.

Art. 444. – *3. Convocation by the court.*

- (1) Where the board of management fails to convene the general meeting whenever it is bound to do so, the general meeting shall be convened by the court on the application of one or more associates.
- (2) In such a case, the court shall make the necessary provisions for the chairmanship of the meeting.

Art. 445. – *4. Procedure and time.*

- (1) The procedure and time of the convocation of a general meeting shall be as provided by the memorandum of association or the statutes.
- (2) Unless otherwise provided, they shall be fixed by the directors in a reasonable manner.

Art. 446. - *Voting at meetings.*

- (1) Decisions of the general meeting shall be taken by a majority of members who are present or represented.
- (2) A decision relating to a point not mentioned in the order of the day shall be of no effect.

Art. 447. - *Equivalence.*

A proposal which has been agreed to in writing by all the associates shall be deemed to amount to a decision of a general meeting.

Art. 448. - *Nullity of decisions of a general meeting. - 1. Action.*

- (1) Notwithstanding any agreement to the contrary, every associate may appeal to the court against decisions of a general meeting to which he has not adhered and which are contrary to the law or the memorandum of association or the statutes.
- (2) The right to appeal to the court shall be barred if not exercised within one month from the day on which the associate knew of the decision.
- (3) An associate shall be deemed to know the decisions taken by a general meeting, where it has been convened without fraud and in accordance with the provisions of the memorandum of association, the statutes or the law.

Art. 449. - *2. Authority of the judgment.*

A judgment which declares the nullity of a decision of a general meeting shall have effect with respect to all persons.

Art. 450. - *Suspension of decisions.*

The court may, on the application of one of the directors of the association or of the office of associations, stay the execution of a decision the annulment of which is demanded.

Art. 451. - *Principle.*

- (1) An association is an entity distinct from the persons of whom it is composed.
- (2) The rights and obligations of the association are not rights and obligations of its members.
- (3) The rights and obligations of the members of the association are not rights and obligations of the association.

Art. 452. - *Name.*

- (1) The name of an association is protected in the same manner as that of a physical Person (Art. 45 and 46).
- (2) Such protection shall not be granted by the law unless the statutes of the association have been deposited in the office of associations or the person who has violated the rights of the association has done so knowing what he was doing and in bad faith.

Art. 453. - *Residence*

- (1) The association shall have its principal residence at the place where its head office is situated, in accordance with the memorandum of association or the statutes.
- (2) It has secondary residence in any place where it has or occupies premises permanently.

Art. 454. - *Capacity. - 1. Principle.*

- (1) An association may perform all civil acts which are consistent with its nature.
- (2) It shall perform such acts through its organs of management.

Art. 455. - *2. Law suits.*

- (1) An association may sue or be sued.
- (2) For this purpose, it shall be represented by such person or persons as are so authorized by the memorandum of association or the statutes.
- (3) Correspondence may be addressed to and notices may be served on the association or its president without it being necessary to specify the organs qualified for receiving such correspondence or notices.

Art. 456. - *Donations and legacies.*

- (1) The office of associations may demand to be informed of any donation or legacy made to an association where such donation or legacy exceeds a certain amount.
- (2) In such a case, the association shall inform the office of associations within six months from the day on which it received the donation or legacy.

Art. 457. - *Extra-contractual liability of the association.*

- (a) An association shall be liable for the acts and omissions of its directors and servants, whenever such acts and omissions have taken place in the execution of the functions which it is their duty to perform and which entail liability.
- (b) An association shall be liable whenever it enriches itself unlawfully.
- (c) The provisions of the Title of this Code relating to "Extra-contractual liability and unlawful enrichment" shall apply in this regard ('Art. 2027.2178).

Art. 458. - *Surety for the debts of the association.*

A director who has acted on behalf of an shall stand joint and several surety for the association, by virtue of the law, whenever the association does not function in conformity with the statutes deposited in the office of associations.

Art. 463. - *State of liquidation.*

- (1) An association shall be in a state of liquidation where it is dissolved in conformity with the law.
- (2) It continues to be deemed to have a personality until the end and for the requirements of such liquidation.

Art. 464. - *Liquidators. - 1. Appointment.*

- (1) Unless otherwise provided by the memorandum of association or the statutes or ordered by the court, an association shall be liquidated by such persons as have been entrusted with its management.
- (2) In default of such persons, the association shall be liquidated by one or more liquidators, appointed by the court.

Art. 465. - *2. Powers.*

- (1) The liquidator has the powers which appertain to the board of management.
- (2) He may not exercise his powers except for the requirements of the liquidation.
- (3) He may not undertake any new transaction.

Art. 466. - *3. Liability.*

- (1) The liquidator shall be liable to the association and to the creditors of the association, for the damage which he causes to them through any mistake which he may make in the exercise of his functions.
- (2) The question of his liability to the association may be raised by any of the associates who have exercised the functions of director of the association during the five years preceding the institution of the action.

Art. 467. - *Devolution of property.*

- (1) The estate of an association which has been dissolved may in no case be partitioned among the associates.
- (2) In default of a provision in the memorandum of association or in the statutes, and unless the general meeting validly destined it for another purpose, such estate shall become the property of the State.
- (3) The general meeting may not decide on the destination of the property if the association is dissolved by the office of associations.

Art. 468. - *Office of associations.*

- (1) An office of associations shall be established in the capital of each province in connection with the governorate of such province.
- (2) The office shall exercise supervision over all associations acting within the province.

Art. 469. - *Deposit of statutes.*

The office of associations shall call upon the founders or the persons managing associations, where appropriate, to draw up and to deposit statutes for the association.

Art. 470. - *Register of declared association.*

- (1) The office of associations shall keep in alphabetical order a register of the associations established in the province and which have been declared to it.
- (2) The directors of an association may appeal to the court against a refusal of registration which is made to them by the office of associations.

Art. 471. - *Progressive number.*

- (1) Every association entered in the register shall be given a progressive number which refers to the file which the office opens for the association.
- (2) Such progressive number shall appear on the statutes and on all the documents making up the correspondence of the association with third parties.

Art. 472. - *File of the association.*

The file of each association entered in the register shall contain:

- (a) the name of the association together with its progressive number; and
- (b) the statutes of the association, and the amendments made to such statutes, together with the date of such statutes or amendments; and
- (c) the name of the directors of the association, or of the persons empowered to represent it; and
- (d) an indication of the secondary residences which the association may have; and
- (e) the decision taken to dissolve the association and the names of the liquidators, where appropriate.

Art. 473. - *General meetings. - 1. Convocation.*

- (1) The office of associations shall be informed in due time whenever a general meeting of an association is held.
- (2) It may be represented by an observer at such general meeting.
- (3) It may prescribe any measure it thinks fit to ensure the good functioning of the general meeting as regards in particular the manner and times of convocation, the order of the day and the holding of the meeting.

Art. 474. - *2. Decisions.*

The office of associations shall be informed within the month following the holding of the general meeting of all the decisions taken by such meeting which are to be entered in the file of the association kept by the office.

Art. 475. - *3. Annulment of decisions.*

- (1) The office of associations may impugn before the court such decisions of the general meeting as are contrary to the law or to the statutes.
- (2) The right to institute such action shall be barred where the action is not instituted within a month from the day when the office of associations has been informed of the decision taken.

Art. 476. - *Amendments of statutes.*

- (1) Where statutes have been amended, a copy of the amended statutes shall be deposited with the office of associations, within the month following the approval of the amendment by the general meeting.
- (2) Such copy shall bear on the cover the words "Text as amended on " .
- (3) Amendments of the statutes may not be set up against third parties, so long as they have not been declared to the office of associations unless it is proved that the third parties were aware of them.

Art. 477. - Directors of the association.

- (1) The name of the members of the board of management and of the persons empowered to represent the association shall be communicated to the office of associations within the month which follows the appointment of such persons.
- (2) Every modification made to such list shall be communicated within the same period.

Art. 478. – Balance Sheet

- (1) The association shall communicate every year to the office of associations its balance sheet approved by the general meeting.
- (2) The Ministry of Interior may prescribe such rules as it thinks fit with a view to ensuring a good presentation and the truthfulness of such balance sheet.

Art. 479. - Ministry of Interior.

- (1) The Ministry of Interior may prescribe, within the framework of the existing laws, any other measure it thinks fit with a view to placing the offices of associations in a position to exercise an efficient control on the associations.
- (2) Such measures may differ according to the object, the importance and the duration of the association.

Foreign bodies corporate

Art. 545. - Bodies corporate.

- (1) Bodies corporate whose head office is situated in a foreign country and which wish to carry out activities in Ethiopia shall apply for an authorization to the office of associations in Addis Ababa. A copy of the articles of association shall be attached to the application.
- (2) The office of associations may refuse to grant the authorization applied for where the proposed activities are contrary to the law or morals. The office of associations may, before making its decision, consult the Ministry concerned with the proposed activities.
- (3) No foreign body corporate may carry out activities nor recruit members in Ethiopia for so long as the authorization has not been granted by the office of associations.

Art. 546. - Property with a specific destination.

- (1) Endowments, trusts and committees constituted in a foreign country may not carry out any activity in Ethiopia for so long as they have not been granted the necessary approval by the Ministry of Interior.
- (2) The Ministry of Interior may refuse its approval where the proposed activity is contrary to the law or morals. The Ministry of Interior may, before making its decision, consult the Ministry concerned with the proposed activity.

Art. 547. - Effect of authorization or approval.

- (1) Bodies corporate which have been granted the authorization specified in Art. 545 and endowments, trusts or committees approved under Art. 546 shall be

fully assimilated as regards the enjoyment and exercise of civil rights, to bodies corporate, endowments, trusts or committees established in Ethiopia.

- (2) They shall be deemed to enjoy such nationality as is recognized to them in the State where their head office is situated.

Art. 548. - Restriction.

- (1) The carrying out of regular activities in Ethiopia by foreign bodies corporate, endowments, trusts or committees or certain classes of the same may be prohibited or regulated by the Ministry of Interior.
- (2) The restrictions imposed upon foreign physical persons with regard to ownership of immovable property in Ethiopia shall apply to foreign bodies corporate, endowments, trusts and committees.

Art. 549. - Revocation of authorization or approval.

- (1) Any authorization granted under Art. 545 and any approval given under Art. 546 may at any time be revoked for good cause by the office of associations or the Ministry of Interior, as the case may be.
- (2) An application to set aside such decision may be made to the court by any of the directors of the body corporate, endowment or committee concerned or any of the trustees within one month from the day on which he was informed of the revocation.
- (3) The court may stay the execution of the order of revocation until the application is decided on.