

**The 2009 and 2019 CSO Laws in Ethiopia:
From Hinderance to Facilitator of CSO Activities?**

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This document represents part of the author's study programme while at the International Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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List of Acronyms

Acronyms

ChSA	Charities and Societies Agency
CRDA	Christian Relief and Development Association)
CSO	Civil Society Organizations
CSP	Civil Society Proclamation
CUD	Coalition for Unity and Democracy
EC	Ethiopian Charity
EHRCO	Ethiopian Human Rights Council
EPRDF	Ethiopian People Revolutionary Democratic Front
ERC	Ethiopian Resident Charity
EU	European Union
NEBE	National Electoral Board of Ethiopia
NGO	Non-Government Organization
TPLF	Tigray People Liberation Front
VECOD	Vision Ethiopia Congress for Democracy),

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Abstract

This research examines the potential effects the new CSP no. 1113/2019 has on CSOs that carry on Human Rights based operations in Ethiopia. It investigates the current consensual understanding of CSOs and questions how these theories can shift in identifying the definition, roles and functions of CSOs in accordance with the political, economic and social contexts. The potential effect of the new CSP is explored by analysing the rationale and the process behind the legislation of the two CSPs i.e. 621/2009 and 1113/2019 combined with critical analysis of the two laws in terms of the contents in light with the empirical data gathered and certain conceptual framework. This paper challenges the assumption regarding Civil Society as an independent and an alternative to state. As the findings from the empirical data suggests the responses of the respondents regarding the accusations that other political and personal interests also shaped the new CSP. The waiting for the outcome of an upcoming election to anticipate on the potential effect of the new CSP could be a good illustration as to how the mainstream understanding of the concept needs to be readjusted to a more critical understanding of the concept.

Relevance to Development Studies

CSOs play an important role in the democratization process and inclusive development. Understanding the dynamics of state-CSOs relationship is vital in the understandings of challenges for an open civic space particularly for CSOs working on Rights-based approach to development. A well-informed civil society organization, with a human right based-approach can play a significant role in the development of a society. At the global level specifically in developing countries, research outputs indicates that there is a tendency of shrinking civic space. Thus, research interventions are required with a diverse understanding of civil society and a headful methodological intervention is required. This study can contribute to the ongoing debates regarding the nature of civil society, development and democratization process in developing country like Ethiopia.

Keywords

Civic Space, Civil Society Organizations, Human Rights, Law

Chapter 1

Introduction

Recently, we have noticed a tendency of restrictive laws and regulations towards CSOs in developing countries (Dupuy et al 2016:299). Some illustrations for this can be China, Sri Lanka and Ethiopia. These restrictive laws are mainly directed toward funding restriction and regulation of operational activities, among other factors, are believed to be the cause for the narrowing of the civic space in developing countries (Buyse 2018:927).

Some research out puts indicate that, when such laws came into effect, different actors and institutions operating in and around CSOs rationalize their interest as well as their existence depending on their political, developmental and economic back ground of the country (Teshome 2018:728). For example in the case of China, “Law on Administration of activities of overseas Nongovernmental Organizations on Mainland China” is intended to discourage relationships between foreign actors and Chinese Civil Society so as to encourage Chinese NGOs to rely on state funding (Gransow 2019:298). Where as in the case of Sri Lanka, the amendment proposed in 2018 to “Voluntary Social Services Act. (VSSO) No. 31 of 1980, while the drafter provides that the purpose of this law is to “regulate, supervise & inspect” NGOs through a legalised “National Secretariat for NGOs”(GROUNDVIEWS 2018), the NGOs accuse that it is one way of restricting the freedom of association (SRI LANKA BRIEF 2018). The same tendency has been observed in Ethiopia.

In case of Ethiopia, the first restrictive and contested Civil Society Proclamation 621/2009 came into effect in February 2009 (Yeshanew 2012:370). As different scholars, CSOs and practitioners had pronounced their concern regarding the restrictive nature of this law and the effect it had on CSOs particularly those that carry on Human Rights based operations in the country (Yeshanew 2012:376). Nearly a decade later, a new CSP number 1113/2019 came into effect, repealing the first CSP with the hope of opening up the civic space (Kelly 2019:4). Therefore, there is a need to appraise a critical inquiry into the dynamic relationship between the state and CSOs in order to understand the character, meaning and role of CSOs under the new proclamation.

To this end, this research paper attempts to address the potential effects of the new Civil Society law Proclamation number 1113/2019 on Human Rights based Civil Society Organizations in Ethiopia. In order to do that, this paper will provide a comparative analysis between the first Civil Society law i.e. Proclamation number 621/2009 and the new CSP number 1113/2019 in terms of the rationale and the process behind the legislation of the two laws, terms of reference regarding the content of the laws and how the new CSP no. 1113/2019 will potentially affect CSOs that engage in Human Rights activities as compared to the preceding CSP no. 621/2009. Therefore, zooming in and studying the potential effect of these laws on human rights based CSOs, will be relevant in order to go beyond the generic definition and roles of CSOs so as to have a wider and critical understanding of the concept and to unravel an important governance issue regarding state-Civil society relations and the effect of these relations on Human Rights and development.

Development, in this sense, ought to include and equally value all participants - i.e. the state, the civil society and private sector. This could help in alleviating people from poverty by allowing them to “create opportunities, share the benefits of development and participate in decision-making” (Arts 2017:58). Even though it is still not fully agreed upon whether human rights are a means to development or the end itself (Arts 2017:58), human development and human rights are two concepts that can be found deeply rooted in each other (Marks 2005:23). According to Marks(2005:24):

Development goals tend to focus on the material conditions that allow people to benefit from economic processes in ways that improve their condition; human rights goals tend to deal with normative constraints on power relations to ensure human dignity and the elimination of repressive and oppressive processes.

Inferred from the above quote, it is safe to claim that the human rights framework has great relevance to the human development framework. The United Nations Office of the High Commissioner for Human Rights (2019) defined civic space as “the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives”. Furthermore, it discussed how a strong civil society can protect the Civic Space if it is independent, knowledgeable and skilled with regard to human rights. A well-informed civil society organization, with a human right based-approach can play a significant role in the development of a society (United Nations 2019).

1.1 Contextualizing the Study

Historically, different literatures provides that modern Civil Society Organizations first arrived in Ethiopia in the 1930s when the first modern faith-based NGOs such as the Norwegian Lutheran Missionaries started their activity. However, there were other traditional Civil Society groups that played a significant role in the day to day activities of the people. A good example of these is, what Teshome (2018:728) referred to as the Community-Based Organizations (CBOs), Idir and Iqub¹ By the 1950s and 60s more NGOs started working in Ethiopia. CSOs have engaged in humanitarian work and provided basic services to people up to 1991. After the downfall of the Derg regime in 1991, CSOs expanded their horizon from mere service providers to rights-based activities such as advocacy, governance and Human Rights issues (Teshome 2018:730).

While providing a certain level of regulation in civic space has positive aspects, such as accountability and transparency of CSOs (Claeye and Van Zyl 2018:606), the closure of civic space may also have undesirable effects or impacts on a country’s development (Roberts 2019:30). True enough however, a certain type of development can still be achieved in a closed civic space (Hossain et al. 2018:11). In the past two decades Ethiopia has undeniably achieved economic

¹ “Iqub is an association established by a small group of people in order to provide substantial rotating funding for members in order to improve their lives and living conditions, while Idir is an association established among neighbours or colleagues to raise funds that will be used during emergencies, such as death within these groups and their families”(*Professor Ayele Bekerie 2003*)

growth, and poverty reduction. The World Bank has stated that “Ethiopia’s economy experienced strong, broad-based growth averaging 10.3% a year from 2006/07 to 2016/17, compared to a regional average of 5.4%” (World Bank 2019). However, in this economic development, the issue of human rights and political space has not yet gained due attention (Roberts 2019:31).

As Lavers discussed (2012:108) after coming to power in 1991, the EPRDF government “reformed” the country from a unitary state to an ethnic-based federal state that comprised of nine regional state and two city administrations. Considering how TPLF’s² opted for the Maoist/Leninist peasant-based struggle, having a bad history with consecutive famines and draughts in the country, the EPRDF government made poverty alleviation a first priority (Lavers 2012:108).

Currently, the EPRDF is also pursuing the “democratic developmental state” as a development policy frame-work. This was inspired by the developmental state theory of Japan (Gebregziabher 2019:476). According to Yoshimatsu (2003:102), the developmental state which was pioneered in Japan around 1870 gained acceptance in other Asian countries like Korea and Taiwan in the 1920s. The development state is understood as a closer symbiosis between the state and private sector and has sometimes been called ‘managed capitalism’ or ‘governing the market’ (Leftwich 1995).

Taking essential lessons from the experience of different countries which practiced the theory of the developmental state, and as a response to the critique of how developmental states forgone democracy for the sake of attaining development, the Ethiopian government came up with the idea that includes democratic elements on development practice and reformulate “democratic developmental” state model (De Waal 2012:152). However, practically there has been a rift between the concept and practice – the issue of democracy has not received a due care and attention (Gebremariam and Bayu 2017:168).

For instance, the idea an open and free civic space, is an important sphere for citizens to practice their democratic rights has not been welcomed by the government (Teshome 2018:731). After the 2005 national election and post-election conflict, the government used this opportunity to shrink the civic space through different laws (Teshome 2018:732).

Millions of people turned out to elect their representatives amongst the dominant contesting parties in the 2005 national election i.e. EPRDF (the ruling party), the Coalition for Unity and Democracy (CUD) and the Union of Ethiopian Democratic Forces (UEDF) (Teshome 2018:732). When the NEBE³ announced the results, the calm pretence started to shake and came the 2005 post-election turmoil (Teshome 2018:732). The opposition parties were able to win the majority of the seats in the Addis Ababa City Council, and the ruling party accepted that. However, the EPRDF claimed that it had won 317 seats (out of 547) of the House of People’s Representatives (Parliament) (Yeshanew 2012:371). And this was contested by the opposition parties claiming that the ruling party hijacked the election (Teshome 2018:738). In the meantime, the people went out on the streets to protest throughout the country (Teshome 2018:734) where thousands were detained (Aalen and Tronvoll 2009:196).

² TPLF: Tigray People Liberation Front, the leading party that created a coalition with three other ethnic parties to form EPRDF (Tadesse and Young 2003:389).

³ NEBE: National Electoral Board of Ethiopia (Teshome 2009:731)

After the 2005-national election in Ethiopia, the civic space for citizens to work on collective action around shared interests and purposes started to shrink (Teshome 2018:733). Prior to the 2005 national election, Civil Societies played a crucial role in providing civic education and trainings on the significance of voting, preparing and conducting forums and debates among political parties (including the ruling party). They also participated in the election process as observers (Teshome 2018:731). As a result, the number of people that turned out to vote was high and the opposition party was able to attain an unexpected victory (Teshome 2018:737). Following these, the government's refusal to accept defeat and people's dedication to see change resulted in the post-election crisis and the government blamed NGOs for the unrest in the country by claiming that these organizations allied with the opposing parties creating a wave of turmoil (Birru and Wolff 2019:834). As a result came the legislation of CSP 21/2009.

Even though there had been a seemingly calm political air in the country the following years, the accumulated violations of human rights and freedom in this period boiled up and resulted in instability and protest in different parts of the country (Abebe 2017:1). In 2014, what started as a small university and high school protest regarding the controversial issue of the Addis Ababa Master Plan⁴ which encroaches over the border and into the land of Oromia regional state, later on created a wave of protest in Oromia that would continue for four years (Gagliardone 2014:294).

Citizens in different regions in the country protested against the killings and unlawful arrests in the country (Chala 2016; Tura 2018). In order to put an end to the protest, the government declared a state of emergency on 9 October 9 2016 (AL JAZEERA 2016), legitimizing the killings and mass imprisonments of activists, reporters, and protestors. Internet access was limited, media was harassed, and social media were blocked (Made for Minds 2016).

The persistent pressure by protestors, activists, and media finally led to the resignation of the Prime Minister and Chairperson of the EPRDF, Hailemariam, on 15 February 2018 and new Prime Minister, Abiy Ahmed came to power (Fisher and Gebrewahd 2018:194). Upon the coming to power the new Prime Minister promised to open the civic and political space in Ethiopia (Lakemann and Soest 2019:4). CSP no. 621/2009 that was instrumental in the closing of the civic space in Ethiopia (Birru and Wolff 2019:832), was repealed and replaced by Proclamation no. 1113/2019. The effects of Proclamation no. 621/2009 on CSOs that employed rights-based approaches to development in Ethiopia was studied by researchers like Roberts (2019), Yeshanew (2012), Birru and Wolff (2019). In this research paper I would like to study in particular the (potential) impact of the new Civil Society law on CSOs engagement with human rights work in Ethiopia.

1.2. Statement on the Nature of the Research Problem

Regulatory action with regard to civil society organizations is important in holding organizations accountable for their actions (Claeye and Van Zyl 2018:606).

⁴ Addis Ababa Mater plan refers to developmental plan for Addis Ababa and neighbouring towns and villages of Oromia regional state, referred to as the 'master plan' (Cirolia and Berrisford:74).

Heywood (2013:58) states that “the decisions of the state are usually (although not necessarily) accepted as binding on the members of society because, it is claimed, they are made in the public interest, or for common good; the state supposedly reflects the permanent interests of society”. This means that the government’s role is to keep up the best interest of the people. However, if not handled with due care a regulation provided by the government could be counterproductive, and instead it could simply slide away from playing a mere regulatory role to a restrictive one (Teshome 2018:735).

Civil Society Proclamation no. 621/2009 has been criticized for going beyond required or desirable regulatory action and for its restrictive nature (Yeshanew 2012:369). The major criticisms of this Proclamation concern the funding restriction that it imposed also referred to as the “10/90 rule” (Yeshanew 2012:374). This Proclamation dealt with two broad types of civil society organizations i.e. Charities and Societies CSOs were further sub-divided into three types based on their nationality and source of funding (Yeshanew 2012:374). CSOs established by Ethiopians that got less than 10% of their funding from international sources are referred to as Ethiopian Charities or Societies; CSOs established either by Ethiopians or other nationals that resided in the country and got more than 10% of their funding from foreign donors were referred to as Ethiopian Resident Charities or Societies; CSOs established abroad but registered in Ethiopia were referred to as Foreign Charities (Federal Negarit Gazette 2009:4522).

Based on these classifications, the law restricted the areas of CSO engagement i.e. Ethiopian resident Charities or Societies and Foreign Charities were limited to playing the role of service-providers (Yeshanew 2012:374), whereas Ethiopian Charities or Societies were allowed to work on issues of Human Rights, advocacy, conflict issues etc (Federal Negarit Gazette 2009:4530). As a result, most CSOs that worked on human rights either shut down due to funding constraints or they ‘restructured’ their objectives and activities in a manner that abandoned their Human Rights based activities (Dupuy et al. 2015a:420). Considering the social, economic and political situations in Ethiopia, it was indeed impractical to acquire the 90% local budget requirement (Yeshanew 2012:373-374). Ultimately, the majority of the registered CSOs were or became Ethiopian Resident Charities (Yeshanew 2012:373-374).

The other point of criticism on the 2009 Proclamation was the 70/30 rule. This rule required all CSOs to allocate 70% of their budget to operational purposes and the remaining 30% to administrative activities (Yeshanew 2012:374). Due to the failure of the Proclamation to define these costs, the officers of the Charities and Societies Agency (ChSA) often interpreted this requirement rigidly (Yeshanew 2012:374). Combined with the broad powers given to the ChSA, which included launching an investigation of records and suspension or cancellation of a licence, this generated the claim by CSOs that the Proclamation was being used for intimidating those “that are not in line with law” (Yeshanew 2012:374).

Another bone of contention relates to the question whether the Proclamation limited CSOs from exercising their constitutional rights such as the right to access to justice provided under article 37 of the FDRE Constitution (Yeshanew 2012:375). This Proclamation limited Ethiopian Resident Charities/Societies and Foreign Charities/Societies in terms of taking matters to court (Yeshanew 2012:375). According to the Proclamation, upon cancellation or suspension of

licence by the ChSA Ethiopian Charities and Societies had the right to appeal to the Federal High Court whereas Ethiopian Resident and Foreign Charities and Societies did not have the right to appeal to any higher courts. In their cases, the decision of the ChSA board was final(Yeshanew 2012:375).

By restricting funds, determining the area of activity of CSOs based on the source of their budget (Federal Negarit Gazette 2009:4522), by granting the ChSA broad power, by leaving a gap in the law regarding the interpretation of what falls under operational and administrative costs, and by denying certain CSOs their right to access to justice, the 2009 Civil Society Proclamation seriously affected CSOs, especially those CSOs that employed a rights-based approach to development (Yeshanew 2012:375). The following figure provides the impacts of CSP no. 621/2009 on different types of CSOs (especially on rights based CSOs).

2009	2011
<ul style="list-style-type: none"> • Total number of local NGOs = 2275. Consisting of: <ul style="list-style-type: none"> ◦ 2000 local NGOs in various sectors ◦ 150 professional organizations ◦ 125 civic advocacy organizations • International NGOs (INGOs): 266 • Adoption agencies: 45 • Consortium: 12 <p>3800 organizations total (estimated, including regionally and federally registered organization, religious groups, and cultural associations)</p>	<ul style="list-style-type: none"> • Total number of local NGOs = 1701. Consisting of: <ul style="list-style-type: none"> ◦ Ethiopian charities (<i>includes human rights organizations</i>): 110 ◦ Ethiopian societies (<i>includes professional and mass-based associations</i>): 261 ◦ Ethiopian resident charities (<i>includes former civic advocacy (i.e. human rights) organizations</i>): 1270 ◦ Ethiopian resident societies: 60 • International NGOs (INGOs): 262 • Adoption agencies: 62 • Consortium: 34 <p>2059 organizations total registered at the federal level</p>

Figure 1: Effect of proclamation 621/2009 on CSOs in Ethiopia Source: Dupuy et al 2014:432

Due to the political “reform” in Ethiopia, the “reformed” government in light of keeping the promise to the people to improve the Shrinking Civic Space(Fisher and Gebrewahd 2018:194), repealed the first very much contested CSP and enacted a new CSP number 1113/2019 on March 12, 2019. In this research paper, I would like to critically analyse the potential effect of the new Civil Society Law on Human Rights based Civil Society Organizations by providing a comparative analysis of the two laws on CSO engagement in their desired area of development work.

1.3. Objectives and Research Questions

The general objective of this research paper is to explore the potential effects of the new Civil Society Proclamation no.1113/2019 on CSOs that carry out Human Rights based activities in Ethiopia. To this end the research question of this

paper is: How does Civil Society Proclamation no. 1113/2019 potentially affect the operations of Human Rights based CSOs? Specifically, this research paper will address the following sub questions:

- i. What are the reasons for, and what was the process involved in the making of these two CSO Proclamations in Ethiopia?
- ii. How do the two Proclamations i.e. CSP no. 621/2009 and 1113/2019 compare in terms of content?
- iii. How does the new CSP no. 1113/2019 affect CSOs that engage in Human Rights activities as compared to the preceding CSP no. 621/2009?

1.4. Method

In order to study the potential effects of the new CSO law (Proclamation no. 1113/2019) on Human Rights based Civil Society Organizations in Ethiopia, I choose to employ a qualitative research method. A qualitative research method helps to reveal feelings, values and perceptions that influence certain actions (Hennink et al 2011: 10). Besides, qualitative research method is essential to deeply investigate the experience of people, social reality and power relationship in and between different actors and institutions and thus is important in making the unheard heard and the invisible to be visible (Hennink et al 2011). According to Hennink et al. (2011:8-9) qualitative research method is “an approach that allows you to examine people’s experiences in detail, by using a specific set of research methods such as in-depth interview”. Specific to this research, qualitative research method is helpful to uncover the power relationship, meaning making and everyday politics (Hennink et al 2011: 10) in the area of state-CSOs relationship and the why how and why CSOs are understood in Ethiopian political and economic interactions. To meet the stated objectives of this research and address the research questions of this research I collected primary data and secondary data.

1.4.1 Data Sources and Data Collection Methods

Primary Data

In order to better understand how the new CSP 1113/2019 potentially affects the operations of human rights in Ethiopia, primary data were collected. I used in-depth interviews with semi-structural questions in my exploration of my research questions. The in-depth interviews were important in providing me detailed accounts of the process around and the potential effects of, the new Proclamation, i.e., CSP no 1113/2019. As Hennink et al (2011:109) stated in-depth interviews are important in the co-production of knowledge. In-depth interview is essential to collect primary data because it can facilitate discussion between the interviewer and the interviewee. This method helped the researcher to deeply engage in a discussion with the civil society practitioners that provided a rich understanding of the matter at hand. Besides, this research method was helpful to engage in a deep conversation with the interviewees that was instrumental to probe feelings and attitudes (Hennink et al 2011:109).

Secondary Data

To supplement my in-depth interviews, I also employed relevant secondary data. These includes secondary data includes legal documents (such as proclamation, directives, regulations), NGO reports, government reports, other research and media coverage on the CSPs. In addition to in-depth interviews, textual analysis had been essential as well to address the research objectives. According to Nelson and Woods (2013) “Textual analysis is the method communication researchers use to describe and interpret the characteristics of a recorded or visual message”. Using textual analysis enabled me to describe the two CSO laws in Ethiopia, particularly the question of how the laws came into being, the process involved, and the content of the laws.

1.4.2 The Process of Locating and Accessing the Respondents

In order to attain the objective of this research paper, which is to explore the potential effects of the new CSP Number 1113/2019 identifying the relevant actors was an essential step. The relevant actors that I identified for the sake of this research paper were Civil Society Organizations, The Agency of Civil Society Organizations (ACSO) (previously known as Charities and Societies Agency or ChSA) and those involved in the legislation of the new CSP such as the Draft Committee of the new CSP. For identifying and locating these actors, and conducting the in-depth interview, three methods were utilized to locate respondents. The first one was that, while reading different literature regarding Civil Society Organizations and the two CSPs in Ethiopia, I took note of several CSOs, implementing organs and other relevant actors that were mentioned frequently and dominantly. Once, I identified these organizations in this way, the second step was to find lists of Civil Society Organizations in Ethiopia. I was able to get access to this list by going straight to the Agency of Civil Society Organizations through an old colleague and a friend. The Agency is the government office that is responsible for registering and monitoring CSOs in Ethiopia. Once I found the list, I short listed CSOs that were engaged with human rights-based activities either before, after or during the drafting of the CSP no. 621/2019. While making the short list, for the sake of getting reliable data from diverse CSOs, I then tried to incorporate respondents from all types of CSOs (based on the classification provided in the CSP number 621/2009) i.e. Ethiopian Charity/Society, Ethiopian Resident Charity/Society and Foreign Charities.

Acquiring data from different kinds of CSOs was necessary to understand the potential effects of the new CSP on Human Rights-based CSOs as compared to the previous CSP. After identifying the CSOs relevant for the purpose of the paper, the next step was to attempt to get in touch with the implementing government office. After repeated visits my colleague, was able to get me an appointment with a few officers. Identifying and contacting those involved in the drafting process of the new CSO was more difficult but I was finally able to get in touch with the chairman of the Drafting Committee for the new CSP 1113/2019 through the CSOs that I created contact with throughout the data collection process.

1.4.2. Challenges and Obstacles Faced During the Data Collection Process

When starting with this research, I did not anticipate that locating and accessing respondents was going to be one of the challenges I was going to face. Even after my supervisor pointed out that it might be difficult to do what I was aspiring to do from The Hague. Once I identified the relevant actors, it was indeed difficult for me to contact them directly from The Hague. To begin with, network connection was one of the obstacles. The internet connection was often weak and mostly off. The other problem was the frequent power outage in Ethiopia. A few of the respondents provided excuses for not keeping to the appointments because their phone ran out of battery because of the power outage. Therefore, I had to be persistent until I finally got the interview.

The other challenge I faced during the data collection process, was that of locating CSOs that were actually willing to go through with the interview. While most of the respondents were willing to do the interview, several CSOs were reluctant and denied my request for the interview directly. Their explanations were, that either they were too busy or they were uncomfortable with the topic. After a few rejections my colleagues that facilitated the interview and I worked hard to reassure the potential respondents we approached that the purpose of the interview was purely for academic purposes. Once they agreed to go through with the interview, two respondents were not willing to have the interview recorded. And one other respondent requested that I write and sign a disclaimer that states that I wouldn't use the recording for any non-academic purposes and that I would delete the audio once I was finished writing the research paper (which I did).

Once, I got their permission and started the interview process, getting the respondents to open up was bit of a challenge. Of course there were some respondents that were more than happy to talk in great detail where the conversation seemed like it was with a person you have known for a while rather than between strangers. However, at times respondents were so careful that they provided generic responses that almost felt like they were reading a well written script. At such times, getting them to open up would have been easier if it was a face to face interview where I could read their expression rather than in a phone call where I could not see them. So what I could do was circle back to some questions with a different approach after giving them some time to be comfortable with the conversation and try to understand the tone in their voice and probe them for answers. The other challenge was regarding keeping the respondents anonymous. Some of the respondents already knew each other and it is quite difficult to provide a description that wouldn't implicate their identity. Even with these challenges faced during the data collection, I was able to acquire relevant data for the research paper.

1.4.3. Data Analysis

During the data collection period, the interviews were conducted in Amharic so that the respondents will be more comfortable. The interviews with respondents were audio-recorded, with the exception of two interviewees who were not willing to be recorded. For the sake of making the data gathered manageable, the empirical data gathered was then transcribed and translated from Amharic into English. After transcribing the data, the transcripts were coded in a manner to

synchronize the transcribed interviews with the research questions. Furthermore, the secondary data were used in order to inform the text analysis focusing on how the two proclamations characterized and approach human rights and human rights activities of CSOs in Ethiopia. To this end I developed points of references in order to compare the two Proclamations. This was helpful to understand the difference in the way the two Proclamations characterize CSOs in Ethiopia, and how these affect Human Rights based CSOs in Ethiopia.

1.4.4 Ethical Considerations and Positionality

Research Ethics

Attaining reliable knowledge and facts about certain matters requires a certain level of norms and ethics (O’Leary 2017:47). In research, ethics basically refers to doing good and avoiding putting others and one’s self in danger or causing harm as a consequence of conducting research (O’Leary 2017:64). Considering the sensitivity of the research problem to be addressed in this research paper requires utmost care. Building trust with the respondents is essential because the reliability and completeness of the data depends in part on the cooperativeness of the interviewees (O’Leary 2017:55). Research ethical guidelines, together with “ethical conscience”, serve as a framework and help researchers make ethical decisions to address “dilemmas” from an “informed position” and help researchers win the permission to do their research (Dench et al. 2004: vii-viii).

Bryman (2016:136) expressed that “it is very difficult, though by no means impossible, to present field notes and interview transcripts in a way that will prevent people and places from being identified”. However, the right of the participants to confidentiality, privacy and anonymity were respected in my research and consent was requested to do audio-recordings. Though the participants allowed me to use their true names for the analysis, I decided to use aliases to avoid any unexpected consequences on the respondents. Another essential issue in order to acquire sound data will depend on whether the respondents will give their informed consent (O’Leary 2017:64). Confidentiality and anonymity will protect the identity of the respondents, which is essential so as to avoid putting them in danger in any way (O’Leary 2017:64). With this in mind, while conducting the interview, the anonymity of the interviewees and the organizations they are associated with was kept confidential whenever the situations requires.

Positionality

In my professional experience, I have worked at ChSA as a monitoring and support officer. This makes me an insider in the Agency. As an officer at the Agency, I was exposed first-hand to the relations between the agency and CSOs. But then again the fact that I left the Agency coupled with legal and administrative changes in the Agency, since also made me an outsider. Therefore, despite my earlier involvement, it still took time before I could manage to get respondents to cooperate by agreeing to have an interview. However, knowing the ins and outs of the Agency certainly came in handy while collecting data. On the other hand, having been exposed to the first CSP and different CSOs, I would have certain biases. To make sure that the result of this research paper reflects the empirical evidence gathered, I made sure to give more space and interview time to a sufficient number of and diverse CSOs and Civil Servant so as to listen to their concerns and balance my analysis.

1.5. Chapter Overview

This chapter contains five chapters. The first chapter deals with background, problem statement, research questions and objectives, and methodology. The second chapter outlines the theoretical frameworks used to analyse the research questions. The third chapter attempts to answer the first research question that is what the reasons for are, and what was the process involved in the making of these two CSO Proclamations in Ethiopia, i.e., Proclamation no 621/2009 and 1113/2019. The comparison between the first CSP (621/2009) and the new CSP (1113/2019) and how the new CSP affect CSOs that engage in Human Right activities are discussed in chapter four. The last chapter contains the conclusion of this study.

Chapter 2

Conceptual Framework

Understanding certain concepts, theoretical approaches and frameworks regarding Civil Society Organizations, their roles in ascertaining human rights, and their relationship with development will be necessary in order address the research question and sub questions provided in this research paper. To this end, in this chapter, since the meanings of CSOs and the roles they play in with in a state depends on the economic and political contexts, I will outline the basic understandings and contestations regarding the concept of Civil Society.

The origin of the concept of Civil Society is as controversial as the definitions provided by different scholars and practitioners (Teshome 2018:728). Teshome (2018:728) in his work “Civil Society and Democratization in Africa” discussed two contesting ideas regarding the origin of the term Civil Society. He discussed that “Modernist” Scholars such as Gellner, Seligman and Tester claimed that the concept of Civil Society was formulated for the first time by John Locke and Adam Ferguson “linking it with the emergence and consolidation of capitalism and the absence of civil society under socialism in the east European countries as a proof to civil Society’s connection to capitalism” (Teshome 2018:727). On the other hand, this supposition was challenged by scholars, who refuted the previous assumption by arguing that there existed traditional Civil Societies before the emergence of capitalism since there was even a space occupied by the social associations between the house hold and the state (Layton 2004:10).

Providing a precise definition of the concept of Civil Society would mean that there is a consensus among scholars on how to define it, which is not the case (Teshome 2018:728). Currently Civil Society is viewed as an essential condition for having a democratic system in a state and as basis for achieving developmental goal, especially in a developing country (Kopecký and Mudde 2003:4). It is treated as an alternative concept that can be found independently of the state and the market (Chandhoke 2007:608). It is mostly defined as “the space for collective action around shared interests, purposes and values, generally distinct from government and commercial for-profit actors” (WHO). The term civil society organizations refer to a broad space of organizations between the state and civil society (Yeshanew 2012:369). It refers to voluntary groups or organizations that are neither from the government nor the profit-making sector (market) (Hossain et al. 2018:18). However, this type of conceptualization regarding Civil Society is just one way of looking at a multi-dimensional concept (Chandhoke 2001:6). It doesn’t cover all the sensitive governance issues regarding state-civil society relations this research paper attempts to address. And thus, limiting the understanding of the concept Civil Society based on such a consensual mainstream understanding would be short of uncovering a multiple layers of state-civil society relations(Chandhoke 2001:8).

For the sake of addressing the objective of the research paper, it will be necessary to address it with its contested conceptualizations. Even though civil society is the “third sphere” aside from the state and the market, CSOs are not necessarily free from the interference of the forces of government and the market (Mohan 2002:194). As Chandhoke (2007:609) explained in political theory

the concept of civil society has never been considered as an alternative to the state.

For de Tocqueville (1835, 1840), civil society limits the state; for Hegel (1821), civil society is a necessary stage in the formation of the state; for Marx, civil society is the source of the power of the state; and for Gramsci (1929–1935), civil society is the space where the state constructs its hegemony in alliance with the dominant classes (2007:609).

Three things are clear from the above quote. The first one is that considering civil society as a neutral space would be naive. The second point is that the role and meaning of Civil Society is dependent on the political and economic context.

There is a consensual agreement on the concept which provides that Civil Society play an essential role for democracy and that active involvement of civil society is a positive factor for the democratization process in a society (Kopecky and Mudde 2003:4). However, this is not necessarily a compelling statement because the space of Civil Society encompasses a wide range of actors (Kopecky and Mudde 2003:11). At times these actors in this sphere could have diverging views regarding the same issue. Therefore as Kopecky and Mudde (2003:11) explained, “there is no straightforward relation between the ideology of CSOs and their effect on democracy” hence there are other larger factors (i.e. economic, political, or development factors, state, other CSOs, donor interests etc.) that determine the outcome of a certain activity of a CSO.

The relationship between a state and the civil society depends on the political, economic, and developmental ideology it relates to (Dash 2001:248). For instance, Chandhoke (as cited in Dash 2001:248) explains how liberals in the modern state conceptualize Civil society as an arena where individuals collectively organize themselves to limit the power of the state. Those who support liberal ideology consider an independent civil society as a precondition to democracy and thus provide tremendous amount of foreign funding to CSOs in order to facilitate democratic processes in developing countries (Seckinelgin 2002:367). Where on the other hand, Marx (as quoted in Dash 2001:248-249) argue that:

Civil Society is merely the extension of the state, controlled by the bourgeois class and so exploitative and oppressive against the working class. ...when the state itself is unable to look after the deprived and disprivileged individuals, it is quite illogical and illusionary to think that communal participation through civil society can really bring any benefit to them.

According to Seckinelgin (2002:359), Civil Society is a reflection of a way of life in a society. And thus its meaning is based on different contexts of life-political, social and economic lives (Seckinelgin 2002:359). Since Civil Society includes interpersonal relations and conducts in a political sphere, considering the concept of civil society as a mere governance issue and related ideologies would limit our understanding and interpretation of Civil Society (Seckinelgin 2002:360). Therefore, Seckinelgin (2002:374-375) suggested that, modern understanding of the concept civil society already presumes the Western fundamental understandings of social, political and economic way of life. And funding are directed towards those that aspire to such a framework, and if not the financial support goes to others that align their understanding with the donor's ideology (Seckinelgin 2002:375).

Upholding the argument that Civil Society is neither independent nor an alternative to the state (Chandhoke 2001:22), will lead to a further quest for fundamental principles so as to prepare a sound regulatory provision that governs the relationship between the state and CSOs (van Zyl and Claeyé 2018:607). Therefore, we should have laws and regulations based on the principles of inclusiveness of all the relevant actors and these actors should be responsible to their actions (van Zyl and Claeyé 2018:606). This means, that transparency is also a key factor for an open civic space and with transparency comes the question of accountability. To substantiate my analysis and include the issue of accountability that was used as a main logic of justification for the legislation of the first CSP, it appears reasonable to include the accountability frame work in my analysis.

According to their postmodernist view, van Zyl and Claeyé (2018:606) wrote that “accountability is based on relationships of power and their effect on actors in different positions” In other words, it refers to the fact that “outcomes are very much the result of who is seen to owe whom an explanation or who has the power to demand one” (van Zyl and Claeyé 2018:607). It is based on this assumption of accountability that van Zyl and Claeyé conceptualized. In order to provide to whom CSOs are accountable to it will be necessary to identify the necessary stake holders (van Zyl and Claeyé 2018:608). To do this van Zyl and Claeyé (2018:608-612) identified three directions of accountability. “[1] Upward Accountability: “mostly entails accountability to different levels of government, donors and other partner NGOs, with a main focus on financial accountability and accountability for delivering the objectives of the programme; [2] Horizontal Accountability: accountable to themselves, their board, members and staff or a self-regulatory NGO umbrella organisation; [3] Downward accountability: accountability toward beneficiaries.”

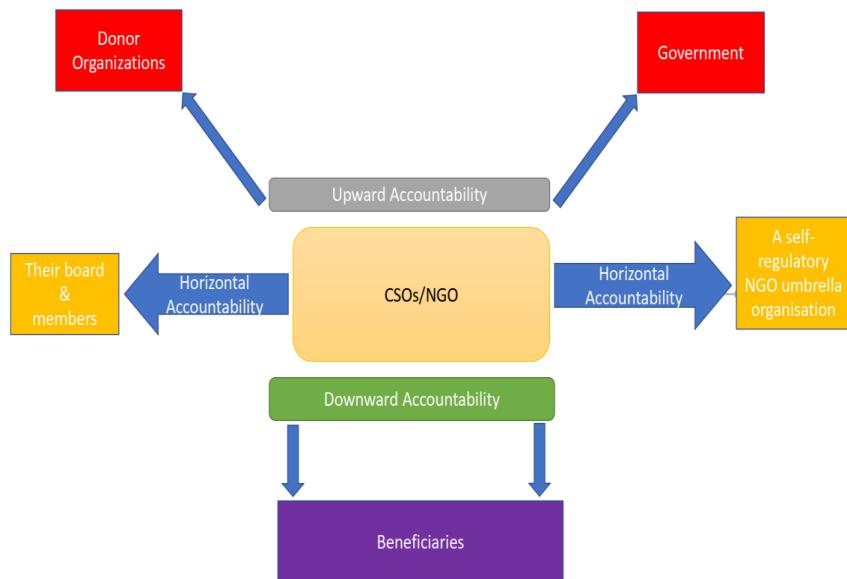


Figure 2: Accountability Framework as explained by van Zyl and Claeyé (2018), Source diagram, developed by author

In reality the concept of Civil Society and the role of CSOs in the democratization process of a society will never be a consensual concept as long as dif-

ferent opposing ideologies exist (Chandhoke 2007:613). Therefore, for the purpose of addressing the research questions and meet the objectives, it appears reasonable for me to employ this kind of understandings of civil society to understand actors, institutions and structures; and the process, content and the potential effects of the newly formulated CSP in Ethiopia.

Chapter 3

The Rationale Behind the CSPs in Ethiopia

Post 2009

This chapter of the research paper is going to answer the question concerning the reasons for and the process involved in the making of these two CSPs in Ethiopia, which is research question number one. It has a paramount importance to understand why and how CSPs 621/2009 and 1113/2019 were legislated because understanding the intent behind a certain law is important since that provides a valuable background and factual information, for example in case inconsistent interpretations of a certain law occur or the law is contested (Greenberg 2006:15). Based on different literatures and the empirical data gathered, this chapter will first discuss and analyse the rationale behind the legislation of CSP no. 621/2009 then moves on to CSP no. 1113/2019. Based on the empirical data gathered, these rationales discussed in the coming topics can be broadly categorized as economic and political justification in the legislation of CSP no. 621/2009 and 1113/2019.

An open civic space is important in facilitating democratic and open political culture (Roberts 2019:30). But still in order to attain this aspired goal, certain level of regulation will be necessary (van Zyl and Claeyé 2018:613). The process of legislating such laws and regulations should be inclusive of all the relevant actors and that these actors shall be responsible for their actions(van Zyl and Claeyé 2018:606). Which means, transparency is also a key factor for an open civic space and with transparency comes the question of accountability(van Zyl and Claeyé 2018:606). That is under these backdrop that we will be analysing the legislation of the new CSP number 1113/2019 if we are to examine the potential effects of the new CSP on CSOs that are based on Human Rights activities. Thus, it appears an imperative to deeply analyse the process and ration of the legislation of the new CSP with empirical evidences.

3.1. The Rationale behind the CSPs in Ethiopia

Before the enactment of the first Civil Society Proclamation in 2009, there was next to nothing in the Ethiopian legal system that directly addressed CSOs, irrespective of the fact that these organizations both formally and informally existed for over a century already (Teshome 2009:733). Even though, different actors and institutions rationalize and perceive the two proclamations differently depends on their affiliation with Civil Society, the data gathered suggested that we can find some similar assumptions and responses on why and how the two CSPs were enacted. These are presented in the next sub-sections of my paper.

When inquiring about the rationale behind the first CSP (number 621/2009), the data gathered indicates three similar understandings. The first one relates to the 2005 National Election in Ethiopia. The second one refers to the gaps in the accountability framework, and the third one is related to calls for harmonization of the development efforts. The data collected also reveal that there are similar responses to the question of the need to repeal the first CSP and enacting the second CSP (number 1113/2019). The first such response

deals with the gaps and the restrictive nature of the first CSP and the effect it had on CSOs especially those that carried out Human Rights based activities. The second such response is related to the political “reform” in the country. Therefore, based on the empirical data gathered, these rationales provided above can be categorized as economic and political justification in the legislation CSP no. 621/2009 and 1113/2019. In what follows, I will analyse these data under the framework of contested understanding of civil society.

3.1.1 Economic Justification

Harmonizing Development Efforts

When coming up with the first Civil Society Proclamation, the government provided accountability as a basic rationale to legislate the first CSP (Yeshanew 2012:375). Prior to the legislation of the first CSP, there was an era of free reign for CSOs where NGO workers were considered to be wealthy and well-established person in the country Demeke (Demeke 2019, Personal Interview)⁵ explains. He further explains that, there was no way of holding CSOs accountable, because there was no legal framework that addressed CSOs, specifically when it came, for example to the sources and utilization of funding. According to Dupuy et al (2015:425), the Ethiopian government accuse “NGOs as opportunists using foreign money for inflated salaries and unnecessary expenses”. Among other factors, several scandals regarding corruption and the ineffectiveness of NGOs, and exaggerated activity reports call the attention of scholars and practitioners to re-examine the accountability of CSOs towards different stakeholder (van Zyl and Claeý 2018:605)

With the first CSP, the Ethiopian government claimed, that the state could support CSOs to become more efficient in obtaining the goals they envisioned (Teshome 2009:736). Teshome (2009:736) discussed how the government justified the first CSP as a means to “promote financial transparency among NGOs/CSOs and increase their accountability to the stakeholders”. Local as well as foreign NGOs, donor organizations and other concerned parties such as Human Rights defenders condemned the CSP no. 621/2009 considering its restrictive nature and its effect on CSOs that carried out Human Rights activities (Teshome 2009:736). However, the increasing amount of power and mismanagement of resources gave the government a pretext to peruse on restricting CSOs (Teshome 2009:733).

According to (Demeke 2019, Personal Interview)⁶ the reason for the legislation of the first CSP no. 621/2009 was to address the gap in the accountability framework and harmonizing development efforts between CSOs, the government, and donors. He further explains that using these gaps as a pretext, the government then justified the legislation of the first CSP, as an act “to protect the sovereignty of the country by limiting foreign interference in the politics of the country through funding restrictions on CSOs”. Besides, he firmly argues that this kind of regulations “increase the benefit of the people through reducing

⁵ Personal interview with Demeke on CSP no.621/2009 and CSP 1113/2019, on 27 August 2019.

⁶ Personal interview with Demeke on CSP no.621/2009 and CSP 1113/2019, on 27 August 2019.

unnecessary expenses of CSOs by regulation”. Thus, according to him, the government considered NGOs/CSOs as gap fillers that should work in line with the development policy provided by government as a road map.

The above data suggest that the harmonization effort of activities by the state appears to consider CSOs as “development partners”. This is a good illustration of the shift from the consensual understanding of the role and meaning of CSOs as an independent entity whose function is to hold the state accountable, to an entity that is dependent on the development understanding of the state. This empirical evidence strengthens Chandhoke’s (2001:22) argument on the nature of Civil Society, that it is not an alternative to the state, rather that Civil Society’s role and function depends on the development ideology of the state.

But the questions still are, these gaps have been there since the time when modern CSOs emerged in the country. So, what was the immediate factor that finally led the legislation of the CSP no. 621/2009? Why then? The response I got was direct, and related to the role of CSOs in the 2005 national election being the trigger for the first and contested CSP no. 621/2009.

3.1.2 Political Justification

CSOs in the 2005 National Election in Ethiopia and the First CSP

Before the 2005 National Election, the majority of the CSOs/NGOs were mostly concerned with providing services (Kassahun 2002:125). They played little role in the democratization process in the country. However, during the 2005 national elections, several CSOs played a significant role so as to ensure a democratic election process. CSOs such as Fafen Development, VECOD (Vision Ethiopia Congress for Democracy), CRDA (Christian Relief and Development Association), and EHRCO (Ethiopian Human Rights Council) played a significant role (Teshome 2009:731). Abebe, during my interview, described this role of CSOs in the election process as follows:

CSOs funded and hosted public debate between the governing and the contestant parties which has been covered by local and international media outlets. After all this, the awareness of people of their civil and political rights made them conscious. A great deal of people turned out to vote on the Election Day and the results gave the opposition ballots beyond the expectations of the government. Not only that, but members of the civil society organization participated as observers in the election as well (Abebe 2019, personal interview)⁷.

As Teshome (2009:731) discussed, the first signs of tensions between the CSOs and the government were first detected when several local CSOs were denied by the NEBE (National Electoral Board of Ethiopia) when requesting to participate in observing the election process. There were two reasons behind this denial (Teshome 2009:731). The first reason for the denial was that CSOs whose objective, as provided in their bylaws, states that activities such as participation in observing election process were the only ones allowed to carry out such as an act(Teshome 2009:731-732). The other reason was related to EHRCO. The council was not allowed as an observer in the election process

⁷ Personal interview with Abebe on CSP no.621/2009 and CSP 1113/2019, on 06 September 2019.

because the ruling party objected that it was not neutral because, its founder Professor Mesfin Wolde Mariam is also the founder of an opposing political party known as Rainbow which later on formed a coalition with other opposition parties to form CUD (Coalition for Unity and Democracy) (Teshome 2009:732).

Most of the respondents from different CSOs and government officials rationalized the act of the government to issue the first CSP was a way of closing the civic space and saw it as a result of the unexpected outcome of the 2005 national election and the post-election crisis. Abebe further described how the active participations of CSOs was not appreciated by the government. Abebe explains that:

The government therefore decided to crack the civil society that showed strength before, during and after the election. It devised a strategy and came out with this law (proclamation 621/2009) that prohibits civil society, and mainly the foreign NGOs(Abebe 2019, personal interview)⁸.

While conducting the interview, respondent Demeke, also confirmed that the 2005 election was the basis for legislating the first CSP. He stated that, among other reasons such as providing accountability, this law had the intention of protecting the sovereignty of the state.

It is the issue in the 2005 election. CSOs were found to be supporting political parties financially. The position of the government was that the CSOs have to be either CSOs or political parties, they can't be both ... It introduced stronger controlling mechanisms through audits. It was able to function well to protect our national interests (Demeke 2019, Personal Interview)⁹.

The role played by CSOs in the election process shows that it is not necessarily true that CSOs are neutral and the act of the government to “crack” the Civil Society as Abebe suggests or the “stronger controlling mechanism” as Demeke discussed shows that CSOs are not immune from the acts of the state. Thus illustrating that the empirical evidence supports the approach of Chandhoke, where he challenges that Civil Society is not a third sphere independent of the state (Chandhoke 2012:7). A good illustration for this can be the role of the CSOs in the 2005 election in Ethiopia, and the consequence they faced following the outcome of the election which ended up in the shrinking of the space for Civil Society though the legislation of CSP no.621/2009. Besides, the data suggest that the role and meaning of CS is dependent on the political ideology that they are affiliated with.

3.2. The Second CSP: A New Promise for an Open Civic Space?

On 12 March, 2019 the first CSP was repealed and in its place came the new CSP no.1113/2019. As discussed in Chapter one of this research paper, the data

⁸ Personal interview with Abebe on CSP no.621/2009 and CSP 1113/2019, on 06 September 2019.

⁹ Personal interview with Demeke on CSP no.621/2009 and CSP 1113/2019, on 27 August 2019.

gathered suggested that the 2018 political “reform” in the country and the limitations of the preceding CSP were two common responses to the question about the rationale for issuing the new CSP no. 1113/2019.

To recall from chapter one of this paper, small scale protests that started in different parts of the country escalated to a big national outcry of the people against several injustices and inequalities in the country. As a result of the “reform”, when coming to power the new Prime Minister Abiy Ahmed promised to open the civic and political space in Ethiopia (Lakemann and Soest 2019:4). Alongside CSP no. 621/2019, other regulations such as the 2008 Mass Media and Freedom of Information Proclamation; the 2008 Political Parties Registration Proclamation; and the 2009 Anti-Terrorism Law” were also considered as manifestations of the shrinking civic space in Ethiopia (Dupuy et al. 2015:425). As one of the respondents, Fekadu¹⁰ explained, there was an understanding that, to enhance the democratization process, these laws should be reformulated.

According to Fekadu, there were four major constraints were frequently mentioned when it came to the first CSP: [1] the funding restriction that it imposed (also referred to as the “10/90 rule”); [2] based on the funding restriction, the restriction that the proclamation imposed on the areas of CSO engagement and their choice of activities; [3] the lack of clear distinction in the classifications of operational and administrative costs (also known as the “70/30” rule”); and [4] the excessive and intrusive power of the Charities and Societies Agency(ChSA). Therefore, according to the data gathered, the rationale behind the legislation of the new CSP was to address these limitations of the first CSP in an attempt to “reform” towards a more open civic space in the country.

Due to the funding and activity restrictions, most CSOs that worked on Human Rights either shut down or they “restructured” their objectives and activities in a manner that abandoned their Human Rights based activities (Dupuy et al. 2015:420). According to Abebe:

It was difficult for many, including us, to survive let alone work if registered as Ethiopian charities. Many of us registered as Ethiopian resident charity and gave in to the pressures of the government and officially abandoned our rights related works (Abebe 2019, personal interview)¹¹.

This concern of Human Rights based CSOs was also pronounced by the work of Yeshanew (2012:373). According to Yeshanew (2012:374) considering the social, economic and political situations in Ethiopia, it was indeed impractical to meet the 90% local budget requirement. Furthermore, another concern was regarding the shortcoming of the Proclamation in defining what falls under operational costs and administrative costs (Yeshanew 2012:374). The officers of the Charities and Societies Agency (ChSA) often interpreted this requirement harshly (Yeshanew 2012:374). Abebe explains, combined with the broad powers given to the ChSA which included launching an investigation of records and suspension or cancelation of a licence, this generated the claim by CSO that the Proclamation was being used to harass CSOs which are deemed not to be in line with law. EC1 added that:

¹⁰ Personal interview with Fekadu on CSP no.621/2009 and CSP 1113/2019, on 23 August 2019.

¹¹ Personal interview with Abebe on CSP no.621/2009 and CSP 1113/2019, on 06 September 2019.

Another problem was the relationship between CSOs and the Agency. Instead of supporting (which was one of the tasks of the Agency under the Proclamation), the Agency leaned more towards controlling and threatening CSOs. The officials at the Agency used the gaps such as lack of clear description of what the 70/30 (administrative and program costs) rule entails. The conventional and international way of allocating program and administrative costs was ignored by the previous Proclamation.

Again strengthening Chandhoke's assertion on the need to readjust the consensual understanding of Civil Society (Chandhoke 2001:22), as the empirical evidence above suggests that the gaps and restrictive nature of the first CSP, like the funding and activity restrictions, excess restrictive power of the ChSA, lack of identifying operational cost and administrative cost... were the factors that necessitated the need to re-evaluate the first CSP, and that the political reform in the country made it easier to legislate a new CSP, brings a new light on the fact that it will be crucial to understand the dynamics behind the state-civil society relations.

All the respondents agreed that, because of the reasons provided above, the first CSP (621/2009) needed to be amended. However, during the interview with several respondents, there was also a certain level of scepticism regarding the rationale and the process behind the legislation of the new CSP (1113/2019). As stated above, the political "reform" played a huge role in the repeal of the previous CSP and the legislation of the new one. When asked for the reason for legislating of the new CSP, Demeke (Demeke 2019, Personal Interview)¹² answered that there is a dynamic political change in Ethiopia. He believed that the new Proclamation is the way the new government chooses to respond to foreign sources: through the law. This finding seems to correlate the understanding of Civil Society is a reflection of the way in which society structures its day-to-day life. And thus, according to him in line with Seckinelgin (2002:359), a modern understanding of the concept Civil Society already presumes the Western fundamental understandings of life. Western funding then is directed towards those that aspire to such a framework, (Seckinelgin 2002:374-375). And Demeke argument seems to fall in line with this approach when asked to rationalize the legislation of the new CSP:

So speaking positively "developed" countries want to reach out through civil societies. They also want to control the aid they provide and ensure accountability. They say they want the normal apparatus of justice to function believing it is enough of a controlling mechanism. Foreign forces want to impose neo-liberal political ideologies. They use such organizations to impose their will. They have been used in Ukraine and why not in Ethiopia. They want wider space for civil societies that they can use and manipulate. One way that they use for this is through civil societies. It is to make the people demand more rights and challenge the government(Demeke 2019, Personal Interview)¹³.

¹² Personal interview with Demeke on CSP no.621/2009 and CSP 1113/2019, on 27 August 2019.

¹³ Personal interview with Demeke on CSP no.621/2009 and CSP 1113/2019, on 27 August 2019.

Another point of contestation among the respondents was about the inclusiveness of relevant actors in the legislation process of the new CSP (1113/2019). Two of my respondents Demeke and Tolosa, both argued that ChSA's role was next to nothing in the deliberation stage of the legislation process. Tolosa (Tolosa 2019, Personal Interview)¹⁴ discussed that in the 10 years during which the Agency functioned in line with CSP 621/2009, the officers were aware of the limitations like the issue with the funding restrictions, and the restrictive nature of the law, among other administrative gaps in the Agency (Tolosa 2019, Personal Interview)¹⁵ discussed that, having worked at the ChSA for a decade, the officers have acquired reasonable experience and knowledge in the field. They further indicated that, the drafters of the new CSP avoided the experts. The officials from the Agency had to ask to participate in the deliberation stage, thinking that, collectively the mistakes done in legislating the first draft wouldn't happen again and the future possible gaps could be avoided if all concerned parties participated. The officials felt that the Agency was at first ignored, then some of the officials were asked to participate to make it look like it was inclusive. Demeke, also expressed the same concern but also went beyond, in explaining why the Agency was ignored. Demeke, stated the following on this aspects:

The participation of the agency can be said to be none. The office of the public prosecutor has been ignoring our institution throughout the whole process. We tried to participate in one discussion and voice our concerns but after that we were told not to attend future discussions. They have failed to include our expertise and experience which we have developed for years in the sector. There was hate towards us, they don't want to listen to what we say at all. And we know for sure that some the drafters were running NGOs and were found to be corrupt by the Agency(Demeke 2019, Personal Interview)¹⁶.

On the other hand, in my interview with a member of the new Proclamation Drafting Committee, (s)he claimed that all the relevant actors, including the ChSA were engaged in the deliberation stage of the making of the new law. (S)he stated that:

...One whole day was given for discussions with ChSA officials to pass on their experience and opinions regarding the draft of the new civil society organizations law. Not only where they involved, they were accusing and insulting the committee...

ChSA was not totally ignored at the drafting stage. However, according to both my relevant respondents, one day was given for the ChSA to deliberate on the new CSP with the drafting committee. The question here is, whether one day was really enough to deliberate on and analyse the gaps of the first CSP, and address all the technical gaps in the interpretation of a proclamation that was 112 articles long, coupled with ten years of acquired experience and knowledge?

¹⁴ Personal interview with Tolosa on CSP no.621/2009 and CSP 1113/2019, on 22 August 2019.

¹⁵ Personal interview with Tolosa on CSP no.621/2009 and CSP 1113/2019, on 22 August 2019.

¹⁶ Personal interview with Demeke on CSP no.621/2009 and CSP 1113/2019, on 22 August 2019.

Maybe not, specially considering the fact that it is still the same organization that is going to be executing the newly legislated Proclamation no.1113/2019.

According to my interview with a member of the Drafting Committee, nine members of the committee were appointed by the office of the general attorney. (S)he explained that, “The members were composed of two people from Addis Ababa University, three members who had a background in civil society and three more who worked in this area and one legal expert from the general attorney’s office”. However, my respondents were unable to explain the criteria used to choose the members of the drafting committee.

The issue of inclusiveness of a government office in the legislation of a civil society law discussed above is an illustration of how civil society has a role in the outcome of political relations, showing the shifting role of CSO as a third independent sphere in playing the role of a drafter of a civil society law. This shows that, as Chandhoke (2007:613) discussed there is a need for a deeper understanding of civil society in order to address such dynamic State-CSOs relations.

Chapter 4

Human Right-Based Civil Society Organizations under the New CPS: A Comparative Analysis

This chapter of the research paper is going to answer the question how the two Proclamations i.e. CSP no. 621/2009 and 1113/2019 compare in terms of content and how the new CSP no. 1113/2019 affect CSOs that engage in Human Rights activities as compared to the preceding CSP no. 621/2009. I will analyse these data under the framework of contested understanding of civil society based on the empirical data gathered. To this end, this chapter will deal with two main topics. First it deals with a detailed comparative description of the contents of the two CSPs (i.e. 621/2009 and 1113/2019) coupled with the analysis. Secondly, it deals with a comparative analysis between the two CSPs in terms of the effects that the first CSP no. 621/2009 had and the potential effect the new CSP 1113/2019 could have on Human Rights based CSOs.

While attempting to study the potential effect of the new CSP on human rights based CSOs, it is essential to explore and analyse the contents of the two CSPs. This is specially so since the assumption is that the limitations experienced under the first CSP was one of the manifestations of the closed civic space in Ethiopia and had a tremendous effect on CSOs that carried out human rights-based activities. Understanding the content of both CSPs in terms of their similarity and difference will be helpful in identifying the impacts of the new CSP. Therefore, identifying the effects the first CSP had on CSOs that carry out human rights-based activities and exploring how the new CSP deals with it will provide us with the potential effect the new CSP.

4.1. A Comparative Analysis between CSP 621/2009 and 1113/2019 in Terms of Content

In this section of the research paper, the content of the two CSPs together with the data gathered through my in-depth interviews with different CSO representatives, implementing government offices and the legislative body will be discussed and analysed in detail. This comparative analysis of content will primarily serve as a foundation in the attempt to provide answers regarding the potential effects of the new CSP on CSOs that carry on Human Rights based operations in Ethiopia.

The findings in this topic of the research paper regarding comparative analysis of the two CSP i.e. 621/2009 and 1113/2019 strengthens the argument that it is far from the truth to consider Civil Society as an alternative and independent of the state(Chandhoke 2012:7). In terms of the title, the way in which both proclamations seek to define CSOs endorses the contested understanding of CSOs with a rather different role and functions in addition to the consensual role given to them. Furthermore, the role of the Agency as a government office in the day to day activity of CSOs coupled with the position of Several CSOs in the board of the Agency, the say of the state regarding fund utilizations shows

that there is a more complex relationship between the state and CSOs. It is to say that it is not only the state that intervenes on the activities of CSOs. But the current trend in Ethiopia shows that Civil Society is also playing a fundamental role in shaping laws as well as determining the administration nature of the Agency.

To have a detailed understanding in the content of the two Proclamations, five aspects were identified. These aspects are title of both CSPs; executing government office; power and functions of the agency; types of CSOs, and fund utilization.

The Titles of the CSPs

CSP no. 621/2009 carried the title ‘Charities and Societies Proclamation’ whereas the new CSP 1113/2019 is referred to as the ‘Organizations of Civil Societies Proclamation’. As the title indicates, Federal Negarit Gazette Proclamation no. 621/2009 (2009:4528) specifically dealt with Charities and Societies. ‘Charities’ referred to “institutions that are established exclusively for charitable purposes and give benefit to the public” whereas ‘societies’ (2009:4542) referred to “associations of persons organized on non-profit making and voluntary basis for the promotion of the rights and interests of its members and to undertake other similar lawful purposes”.

On the other hand, the new CSP as provided by the Federal Negarit Gazette Proclamation no. 1113/2019 (2019:11007) deals with CSOs, and defines these organizations as “a Non-Governmental, Non-partisan, Not for profit entity established at least by two or more persons on voluntary basis and registered to carry out any lawful purpose, and includes Non-Government Organizations, Professional Associations, Mass based Societies and Consortiums;” This means that the new CSP doesn’t actually incorporate all CSOs. Because the term Civil Societies Organizations, as Yeshanew (2012:369) explained, refers to a wide sphere between the state and the market. Some illustrations of CSOs that doesn’t fall under the new CSP are religious organizations, trade unions, community based organizations such as Edir, Equb and similar traditional institutions (Federal Negarit Gazette 2019:11010).

Executing Government Office

The government office responsible for the implementation of the first CSP (6212009) was known as the Charities and Society Agency (here after referred to as the Agency). This Agency was led by a board which consisted of seven members nominated by the government and out of which two were from Charities and Societies (Federal Negarit Gazette 2009:4526). Under the new CSP (1113/2019), the same government office has been made responsible for implementing the law but the name of the Agency is now changed to Civil Societies Organization Agency. Unlike under the preceding Proclamation, the board now comprises of eleven member, (Federal Negarit Gazette 2019:11014), including;

Three representatives of Government bodies, designated by the Attorney General; three representatives designated by the Council of Civil Society Organizations; one expert knowledgeable in the workings of civil society, to be appointed by the Attorney General on the basis of his/her competence; two members from National Federation of Disability Associations, who have the experience and capacity to enhance and strengthen benefit and en-

agement of all disability community; two members from National Federation of Disability Associations, who have the experience and capacity to enhance and strengthen benefit and engagement of all disability community, (Federal Negarit Gazette 2019:11014).

In both CSPs, organizations aggrieved by administrative decisions of the Director General could launch an appeal to the Board of the Agency. According to the first CSP no. 621/2009, if the organization that appealed to the Board was not satisfied by the decision passed, and if the organization was an Ethiopian Charity/Society then it could appeal to the Federal High Court. However, when the organization was an Ethiopia Resident Charity/society or Foreign Charity, then the decision of the board was final (Yeshanew 2012:375). This restriction on Ethiopia Resident Charity/society and Foreign Charity has been criticized by several scholars and legal practitioners because of its unconstitutional nature (Yeshanew 2012:375), since this provision contradicts with the constitutional right provided under Article 37 of the FDRE Constitution regarding the right to have access to justice. The new CSP 1113/2019 repealed this provision and grants all organizations the right to appeal to the Federal High Court if the organization is not satisfied with the decision of the Board (Federal Negarit Gazette 2019). According to Lensa (Lensa 2019, personal interview)¹⁷ opinion it is one step closer to the aspired open civic space in Ethiopia.

Power and Functions of the Agency

One of the major criticisms against CSP 621/2019 was regarding the powers and functions of the Agency. The data gathered for this paper criticized that the power and functions of the Agency have been too broad, and intrusive, and that the tight bureaucratic hurdle to when seeking for services was very inconvenient (Yeshanew 2012:374). When compared in terms of content both the first CSP 621/2019 and the second CSP 1113/2019 more or less provided the Agency similar powers and functions, maybe with an exception regarding the property administration of CSOs (see Annex 2). As per CSP 621/2009, Charities and Societies could only dispose of property through the Agency. When buying immovable or special movable, property the ownership of the property was both in the name of the Agency and the CSO (Federal Negarit Gazette). The rationale provided for this provision, as Senior Civil Servant 1 justified, this as follows:

Previously the controlling mechanism was strong and through this we were able to save more than 200 million birr that was going to be disposed by some organizations. This was to the advantage of the beneficiaries. The new law leaves them without an effective controlling system that ensures their accountability. It seems like the power of the Agency has been diminished by the new law.

But when we come to the new CSP 1113/2019 Civil Societies Organizations can manage their property as they deem it fit (Federal Negarit Gazette). Tariku explained that during the time of CSP 621/2009:

the Agency had the final say on how we administer property. Most officers in the Agency treated us like we were wrongdoers who needed to be looked

¹⁷ Personal interview with Lensa on CSP no.621/2009 and CSP 1113/2019, on 4 September 2019.

after closely even though our objectives are to provide support to beneficiaries. They assumed that we were all corrupt. I am not saying that all CSOs were good, but the previous proclamation did not solve the problem. Rather it opened an opportunity for some corrupt officer at the Agency (Tariku 2019, personal interview)¹⁸.

Holding CSOs accountable for their actions in the way they administrate property is necessary (van Zyl and Claeyle 2018:612). Hana (Hana 2019, personal interview)¹⁹ agreed that a good regulatory framework will be necessary to ensure that CSO property is not misused. After all, these properties are there for the advantage of the beneficiaries. However, he argued that, registering immovable property and special movables in the name of a government office goes beyond regulatory action and CSOs should have, as a legal person, the right to own and administer properties.

Another point of interest regards the additional power and function given to the Agency by the new CSP no. 1113/2019. The new CSP provides that the Agency should “develop policy guidelines to ensure that the development activities undertaken by Organizations are to the extent possible aligned with the development plans issued by the government” (Federal Negarit Gazette 2019:11012). This means that the new CSP aspires to harmonize development efforts between CSOs and the government. Even though, the government has claimed that one of the rationales for the new CSP was to harmonize development efforts between CSOs, the government and donors, the mandate to provide such policy guideline was given to Sector Administrators (Federal Negarit Gazette 2009:4547). For example, if a CSO choose to work on education, then the appropriate sector administrator would be the Ministry of Education at the federal level and the Education Bureau at regional level would be responsible to develop policy guidelines. This Sector Administrator will supervise and monitor the operational activities so as to ensure that development work of the organization is in harmony with the government policy. In Lensa’s (Lensa 2019, personal interview)²⁰ opinion, such a provision has the tendency to centralize and concentrate prior dispersed power and responsibility in one single institution. Furthermore, considering how the Agency is criticized for unnecessary bureaucratic delays, this will further create a bureaucratic hurdle.

Funding

According to the first CSP 621/2009, CSOs were required to allocate 70 percent of their budget to operational costs and the remaining 30 percent to administrative activities (Yeshanew 2012 :374). According to the new CSP, CSOs are required to allocate 80 percent of their budget to operational costs and the remaining 20 percent to administrative activities (Federal Negarit Gazette 2019:11042). The failure of the first CSP to define what falls under administrative and operational cost was a point of criticism (Yeshanew 2012 :374). One of

¹⁸ Personal interview with Tariku on CSP no.621/2009 and CSP 1113/2019, on 11 September 2019.

¹⁹ Personal interview with Hana on CSP no.621/2009 and CSP 1113/2019, on 16 September 2019.

²⁰ Personal interview with Lensa on CSP no.621/2009 and CSP 1113/2019, on 4 September 2019.

the powers of the Agency under both Proclamations has been to prepare and implement directives in line with the Proclamations. Therefore, the Agency legislated directive no. 2/2003. My respondent Fekadu explained that:

The officials at the Agency used the gaps such as the lack of clear description of what the 70/30 (administrative and program cost) rule entailed. The conventional and international way of allocating program and administrative cost was ignored by the previous proclamation. All costs were considered to be administrative(Fekadu 2019, personal interview)²¹.

The new CSP, reduces the administration cost by 10 percent. However, Hana (Hana 2019, personal interview)²² provides that, it has provided that some costs, such as monitoring and evaluation costs are no longer administrative costs. Tariku discussed that the reason the Agency took this decision was that some CSOs abused monitoring and evaluation costs, over riding other unexplained cost simply as monitoring and evaluation cost. He further explained that rather than finding an alternative regulatory action, the Agency simply generalised such costs as an administrative cost.

Classification of CSOs

As discussed already in chapter one and four of this research paper, the first CSP 621/2009 classified CSOs based on their nationality and source of funding(Yeshanew 2012:374). Based on this, CSOs that wanted to carry out rights-based activities, conflict resolution, advocacy etc were not allowed to gain more than 10 percent of their funding from foreign sources(Yeshanew 2012:374). This was highly criticized for its restrictive nature and its impact on the financial status of CSOs that carry on human rights-based activities (Yeshanew 2012:374).

The new CSP 1113/2019, however has lifted of these restrictions. Currently, there are thus only two types of CSOs foreseen Ethiopia: foreign and local organizations and all CSOs can engage in any operational activities they deem fit, with one exception (Federal Negarit Gazette 2019:11041). When discussing about operational freedom, article 62(5) states that:

unless it is permitted by another law Foreign Organizations and Local Organizations which are established by foreign citizens which are residents of Ethiopia may not engage in lobbying political parties, engage in voters education or election observations.

Respondent Fekadu criticized this provision by stating that:

the new proclamation provides that they are not allowed to lobby or observe the national election unless allowed by the responsible government sector or unless they work in partnership with Ethiopian civil society organizations. Our Organization has requested that this restriction is not necessary. Because the issue of human rights is universal and any kind of violations of human rights might occur whether it is during election or not civil society organizations should be allowed to work together. Creating such a

²¹ Personal interview with Fekadu on CSP no.621/2009 and CSP 1113/2019, on 23 August 2019.

²² Personal interview with Hana on CSP no.621/2009 and CSP 1113/2019, on 16 September 2019.

hurdle is just another means to close the civic space (Fekadu 2019, personal interview)²³.

On the other hand, Demeke (Demeke 2019, Personal Interview)²⁴ argued that even this restriction is not enough. Demeke stated that one of the reasons for criticizing the funding restriction under the first CSP was that local CSOs in Ethiopia are not financially independent. Therefore, Demeke argues, partnering with Foreign CSOs with local CSOs as provided by the new CPS does not ensure the sovereignty of the country since the local CSOs do not have bargaining power.

The argument that human rights are universal and any kind of violations of human rights whether during election or not, is not acceptable. An open civic space is a necessary factor in the democratization process of a country. The sovereignty of a country should be respected. However, Seckinelgin's argument that civil society is a reflection of a way of life in a society (2002:359), as Demeke argues that an environment has to be created so that local CSOs can set their own agenda especially regarding human rights issues. Following this line of reasoning, it appears sensible to claim that foreign funding should be directed towards creating an enabling environment and shouldn't create a suffocating environment.

Therefore, the meaning, role and character of CSOs in Ethiopia as it is discussed above shows that there is a shifting from the mainstream understanding of Civil Society to a contested understanding of civil Society. In this regard, the empirical data presented above readjusts the place of CSOs in the political arena of the country as important actors in the development efforts of the country, treating it not as an independent sphere.

4.2. Potential Effects of CSP 1113/2019

The new CSP no. 1113/2019 has only been in place since 12 March, 2019. Even though it is early to tell, we can analyse the potential effect of this law on CSOs that carry out human rights based activities by analysing the effects its predecessor, CSP 621/2009 had and by exploring how the new CSP addresses these effects. To do so, understanding the motivation behind the legislation of the two CSPs and a detailed understanding of the content has a paramount importance. The potential effect of CSP 1113/2019 will now be analysed based on the principles of inclusiveness, transparency, and accountability under the backdrop of earlier presented elements of the contested understanding of civil society.

First I will discuss how the new CSP 1113/2019 deals with the limitations that characterized CSP 621/2009. According to the new CSP proclamation no.1113/2019 (2019:11041), CSOs are no longer classified based on their sources of funding. There are also allowed to engage in any activity they deem fit in order to attain their objective whether it is to work on human rights, advocacy or be service providers there is one exception though in the forms of the earlier quoted provision that, i.e., "foreign organizations and local organizations which are established by foreign citizens which are residents of Ethiopia may

²³ Personal interview with Fekadu on CSP no.621/2009 and CSP 1113/2019, on 23 August 2019.

²⁴ Personal interview with Tolosa on CSP no.621/2009 and CSP 1113/2019, on 22 August 2019.

not engage in lobbying political parties or observe elections" (Federal Negarit Gazette 2019:11041). CSOs are now classified in to two. Local organizations which can be established by Ethiopians, foreigners residing in Ethiopia or both. The other one is a foreign organizations established according to the law of the country where it originated but registered to work in Ethiopia. Regarding fund utilization, the proclamation now clearly provides the costs that fall under administrative and operational costs (Federal Negarit Gazette 2019:11042).

Another point of limitation of CSP no. 621/2009 is with regard to the[issue of the right of access to justice provided under article 37 of the FDRE constitution. According to this proclamation Ethiopian Charities and societies upon cancellation or suspension of licence by ChSA have the right to appeal to the federal high court where as Ethiopian resident and foreign charities do not have the right to appeal to any higher courts and in such a case the decision of the ChSA board is final (Yeshanew 2012:375). However, the new CSP 1113/2019 has now repealed such a clause. Therefore, upon cancellation or suspension of licence by Civil Society Organizations Agency, all types of CSOs i.e. local and Foreign CSOs have the right to appeal to the Federal High Court (Federal Negarit Gazette 2019). As compared to the previous CSP, Hana (Hana 2019, personal interview)²⁵ claims that, content wise the new CSP no. 1113/2019 seems to have marked a new era for Human rights based organization.

One of the concern raised by my respondent from CSOs was about the new directives that are going to be prepared by the agency. Respondent Fekadu provides that there are some issues not covered in the new CSP , such as the issue of how CSOs whose objective is to empower or support their members are exempted from the 80/20 rule. Which was the same under the previous CSP. However, EC1 questions what happens if a CSO works on both the empowerment of its members as well as third party beneficiary? Other types of laws such as regulations and directives are legislated when such gaps occurs. Fekadu argues that:

If the directives don't deal with such an issue with due care, then human rights-based civil society organisations will be vulnerable to abuse just like the time of the previous proclamation.these are the laws that can tie up civil Society organisations(Fekadu 2019, personal interview)²⁶.

As we have seen in the previous chapter, while discussing the process of the legislation of the new CSP, the empirical data collected shows that the drafting process was contested. There were allegations that *other political and personal interests shaped* the new CSP. It is not the aim of this research paper to investigate any possible allegations made. However, the collected data suggests that it was not only the issue of the content of the law that was at play. What will be the effect of such legislation process in the preparation of regulations and directives that are expected to further describe how the CSP should be implemented? Therefore, the legal lacunas stated above, if not dealt with carefully in the regulations and directives then can be used as a loophole to misuse power and attack

²⁵ Personal interview with Hana on CSP no.621/2009 and CSP 1113/2019, on 16 September 2019.

²⁶ Personal interview with Fekadu on CSP no.621/2009 and CSP 1113/2019, on 23 August 2019.

CSOs that carry out human rights activities, suggests Lensa (Lensa 2019, personal interview)²⁷.

The other concern raised by my respondents when asked for the potential effects of the new CSP was regarding the upcoming 2020 national election. Tariku explained that:

It is too early to comment but we need to wait and see what will happen in one year or less, I think. If it is going to happen, the election is only nine months away and many of us (CSOs) are interested to work on it. But it may or may not please the government... (Tariku 2019, personal interview)²⁸

Like Tariku, most of my respondents have tied up the effectiveness of the new CSP with their speculations as to what might come about in the national parliamentary election in 2020. Fekadu provided that their organization has plans to work on the election through awareness creation and observation of the election process so as to make sure that the people will be informed in their right and duties in the election and to make sure the election process is conducted in the appropriate manner and to observe that that Human Rights violations that occurred following the 2005 election wouldn't be the fate of the upcoming election. However, Tariku is concerned that there might be obstacles like the 2005 election, the government might decide that only those CSOs whose objective, when establishing the CSOs, is to work on democratization and election process can only participate in such activity. Hence, Tariku used to be classified as an Ethiopian Resident Charity and these type of organizations under the first CSP could not engage in such activity. One thing is for sure though, six out of the eight CSOs I interviewed aspire to work on the election coming up in 2020. Van Zyl and Claeyle (2018:613) discusses that CSOs should among other things be accountable "for is their values, which they translate into their vision and mission". While I agree that CSOs should work on any issues that they dim sensible and advantageous to the people, the question is why most CSOs are suddenly interested in working on the election? And why are some CSOs completely deviating from their original vision and mission? Demeke argues that the reason for this has more to do with foreign funding.

As per the new CSP, CSOs are required to re-register with in one year after its publication of the law (Federal Negarit Gazette 2019:11056). Up to the time this research paper was written, based on the data gathered from the Agency, by October 2019, out of the existing 3491 CSOs 1250 had re-registered (which means only 36% of the CSOs) and 360 new CSOs have been registered. And out of the eight CSOs interviewed only three re-registered. When I asked the other five CSOs as to why they had not re-registered, all they said was that they still have a couple of months to re-register. Considering how the CSOs were eager for the coming of the new CSP, further investigation is required to understand as to why 64% the CSOs have still not re-registered.

Unlike its preceding proclamation seems to shed a new light of hope for the narrowed space in the civic arena for CSOs that carry on Human Rights based operations in Ethiopia. The respondents for this research paper provides that the revised content of the law on its own is not sufficient enough to address

²⁷ Personal interview with Lensa on CSP no.621/2009 and CSP 1113/2019, on 4 September 2019.

²⁸ Personal interview with Tariku on CSP no.621/2009 and CSP 1113/2019, on 11 September 2019.

the potential effect of the new CSP. SCS 1 discusses that other politically or personally motivated actions will have an impact on the effect the new CSP has on CSOs that carry on Human Rights based operations in Ethiopia. Fekadu discusses that:

Not only the provisions of the previous law were restrictive, but guidelines and explanations and individual personalities make a good contribution to make the law in practice restrictive (Fekadu 2019, personal interview)²⁹.

The current situation regarding CS in Ethiopia can be a good illustration for as to how the mainstream understanding of the concept or as Chandhoke (2001:1) called it “flattened out concept” needs to be readjusted to a more critical and contested understanding of the concept. How CSOs are ideationally, practically implemented and how they are projected in developing countries more specifically in Ethiopia, as the empirical evidence gathered for this paper shows, is reason enough to uphold that Civil Society has always been a point of contestation when it comes to formulations of different political ideologies. As stated previously, it is safe to say that considering civil society as a neutral space would be naïve hence the role and meaning of a CSO depends on what the political ideologies and conditions both the CSOs and the state are affiliated with. The responses of the respondent regarding the allegations that other political and personal interests also shaped the new CSP and the waiting for the outcome of an upcoming election to anticipate on the potential effect of the new CSP is reason enough to stipulate that the mere amendment of certain provisions in a Civil Society Law is not enough to ensure that the problems with the law on CSOs that carry on Human Rights based activities are necessarily resolved. According to Fekadu “The inefficiency of the legal system, independence of the judiciary, the Government’s willingness and ability to execute the law... are also factors that can affect the effectiveness of the new proclamation”.

Therefore, in addition to the minor gaps in the law that could have the capacity to create a hurdle on CSOs, there are other factors that could also hinder the aspired open Civic Space the new CSP is expected to create.

²⁹ Personal interview with Fekadu on CSP no.621/2009 and CSP 1113/2019, on 23 August 2019.

Chapter 5 Conclusion

Post to the 2005 national election crisis, a number of laws were legislated in Ethiopia i.e. “the 2008 Mass Media and Freedom of Information Proclamation; the 2008 Political Parties Registration Proclamation; and the 2009 Anti-Terrorism Law” (Dupuy et al. 2015:425). As different literatures backed with empirical evidence suggests that the 2009 CSP among these laws have been known as the indication for the closing Civic Space in Ethiopia. The funding and activity restriction introduced by this law had a tremendous effect on CSOs that carry on Human Rights based operations in Ethiopia. According to a study conducted by Dupuy et al (2014:432), due to the funding restriction by 2011, out of 2275 local NGOs in the country, only 1701 of them survived. Even then, those who survived had to readjust their objectives and activities to survive as ERC and obtain foreign funding (Dupuy et al 2014:432). And only 110 CSOs continued as Ethiopian charities and these included those that carried on various development activities and those that carry on Human Rights based operations(Dupuy et al 2014:432). Nearly a decade later Fisher and Gebrewahd stated (2018:194), accompanying the political “reform” in Ethiopia, CSP 621/2009 was repealed and a new CSP no.1113/2019 came into place with a hope for a more open Civic Space and a better working environment for CSOs that carry on Human Rights based operations.

This research paper was set to examine the potential effects of the new Civil Society Proclamation no.1113/2019 on CSOs that carry out Human Rights based operation in Ethiopia. To this end analysing and answering the research questions regarding the rationale and the process behind the legislation of the two CSPs i.e. 621/2009 and 1113/2019 combined with critical analysis of the two laws in terms of the contents in light with the empirical data gathered and certain conceptual framework was instrumental in the attempt to explore the potential effects of the new CSP on CSOs.

In this research paper, different approaches and frameworks regarding CSOs, their roles in ascertaining human rights, and their relationship with development were addressed so as to explore the potential effect of the new CSP on CSOs. Even though there is a common understanding of the concept CS as an independent and an alternative to the state and as an essential precondition for democracy. Hence, their role is to hold the state accountable; this consensual understanding creates unrealistic comfort zone, that only considers half of the different understanding of the concept, “flattening it out” as Chandhoke described it(Chandhoke 2001:1).

It is necessary to readjust our understanding of the concept in line with its contested nature. The potential effects of CSP 1113/2019 were analysed based on the principles of inclusiveness, transparency, and accountability. The empirical evidence gathered in this research paper is reason enough to affirm the argument that CSOs are neither independent nor an alternative to the state. It rather proofs that Civil Society has always been a point of contestation when it comes to formulations of different political ideology(Chandhoke 2007:608), and that the role and meaning of a CSOs depends on other political and economic factors(Chandhoke 2007:607). While amending the funding and activity restrictions is a good step forward, the responses of the interviewees regarding the allegations that other political and personal interests also shaped the new CSP

and the waiting for the outcome of an upcoming election to anticipate on the potential effect of the new CSP confirms that, this alone is not enough to ensure a widening Civic Space for CSOs that carry on Human Rights based operations in the country.

Based on the assumption that Civil Society and state are interdependent, then there needs to be certain regulatory frameworks so as to ensure that this relationship is based on the principles of transparency and accountability. Even though further investigations are required to acquire detailed information and evidence regarding allegations made during the interview process, I believe that there is an empirical evidence to suggest the following recommendations. In line with Graham et al. (2003:3) so as to make sure that further legislations that govern State-CSOs relation can bring the aspired open Civic space in Ethiopia, I suggest the following recommendations.

Looking at it from legitimacy and strategic vision, during the process in the legislation of CSP no. 1113/2019 the empirical data gathered suggests that there were allegations made that all the necessary actors were not participants. If the vision is to come up with a CSP that is based on the principles of inclusiveness, transparency and accountability so as to have a sustainable regulatory framework that is fair to all the CSOs, the government and the beneficiaries, and without the influences of different biases to provide a legitimate policy then those that have the mandate to provide the draft, in this case the FDRE General Attorney should be transparent while nominating the drafter and should give due attention whether all relevant actors and factors have been involved. If the relevant actors genuinely participate in the making of such regulations then the odds of the policy being influenced by other interests will be minimized and hence keeping the legitimacy of the regulation. Accountability and transparency being the basic principles here, it goes without saying that both the state and CSOs should be accountable and the way to achieve that is through transparency. Understanding that CSOs are not independent of the state, it is my recommendation that they come together with other institutional stakeholders, and ensure that CSOs are functioning in a transparent manner so as to be accountable for their actions in line with the mission and visions of the organizations and regulations provided by other institutional stakeholders. Hence, one of the pretence for the rationale behind the legislation of the first CSP by the government, as different literatures and the empirical data gathered also suggests, was the issue of corruption and abuse of resources by CSOs.

This research paper can potentially contribute to the continuing scholarly debates on the contested understanding of the concept CSOs. It can hopefully generate a further debate regarding the relationship between the state and CSOs. This research is limited to only the potential effects of the new CSP on CSOs that carry on Human Rights based operation. And hence further research is required to understand the overall dynamics of State-CSOs relations.

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Appendices

Appendix 1: List of Interviewees

No.	Informant Name ³⁰	Sex	Age	Position	Date of Interview	Place of Interview
1.	Abebe	M	57	Program Manager; CSO	September 06, 2019	Addis Ababa
2.	Tariku	M	38	Director; CSO	September 11, 2019	Addis Ababa
3.	Meron	F	32	Director, CSO	September 03, 2019	Addis Ababa
4.	Fekadu	M	34	Executive Director, CSO	August 23, 2019	Addis Ababa
5.	Elsa	F	29	Executive Director, CSO	August 30, 2019	Addis Ababa
6.	Solomon	M	31	Program Manager, CSO	August 21, 2012	Addis Ababa
7.	Lensa	F	38	Country Representative, CSO	September 4, 2019	Addis Ababa
8.	Hana	F	40	Monitoring and evaluation Coordinator, CSO	September 16, 2019	Addis Ababa
9.	Demeke	M	52	Senior Civil Servant	August 22, 2019	Addis Ababa
10.	Tolosa	M	34	Senior Civil Servant	August 22, 2019	Addis Ababa
11.	Samson	M	55	Member of Drafting Committee	August 26, 2019	Addis Ababa

³⁰ All the names are invented

Appendix 2: Comparative description between CPS 621/2009 and CPS 1113/2019 in terms of content

Content	CSP No. 621/2009	CSP No. 1113/2019
Title	Charities and Societies Proclamation	Organizations of Civil Societies Proclamation
Implementing Government Office	Charities and Societies Agency	CIVIL SOCIETIES ORGANIZATION AGENCY
Members of the Agency Board Composition	The board consisted of seven members to be nominated by the government. Among the seven members two of them shall be nominated from the Charities and Societies.	<ul style="list-style-type: none"> i. Three representatives of Government bodies, designated by the Attorney General ; ii. Three representatives designated by the Council of Civil Society Organizations ; iii. One expert knowledgeable in the workings of civil society, to be appointed by the Attorney General on the basis of his/her competence; iv. Two members from National Federation of Disability Associations, who have the experience and capacity to enhance and strengthen benefit and engagement of all disability community; v. Two Members represented from Women and Youth Associations by their own structure.
Powers and Functions of the Agency	<ul style="list-style-type: none"> i. To licence, register and supervise Charities and Societies in accordance with the proclamation. ii. To encourage Charities and Societies to have better administration. iii. Collect, analyse and disseminate information that has connection with its powers and functions. iv. Organize consultative forum for governmental organs and Charities and Societies v. Upon an investigation, if the agency is satisfied that there is or has been any misconduct or mismanagement in the administration of a Charity or a Societies, 	<ul style="list-style-type: none"> i. Register Organizations and support, facilitate and coordinate their activities in accordance with this Proclamation; ii. Monitor and supervise Organizations to ensure that they undertake their activities in compliance with the law; iii. Examine and the annual activity and financial reports of organizations conduct the necessary follow up in accordance with the stipulations under this Proclamation; iv. Provide the necessary support to organizations to enable them to have systems of

	<p>the agency shall take measures such as: suspend the officer responsible for the misconduct or mismanagement and order the appropriate organ of the Charity or Society to assign another person and/or order the charity or Society to assign improve its system of operation.</p> <p>vi. The officers of a Charity or Society shall report to the agency annually and upon request about all the bank accounts of the CSO.</p> <p>vii. Any Charity or Society: that fails to comply with the Agency's orders under Article 73(2) of this proclamation within the time limit set by the Agency; that has submitted falsified accounts and reports to the Agency; when the action of the CSO contravenes the provisions of the Proclamation or Regulations and Directives issued thereunder or orders of the Agency or its own rules; that fails, within the appropriate time, to provide the Agency with information required by this Proclamation; may be suspended by the agency until it comes into compliance.</p> <p>viii. The license of any Charity or Society shall be cancelled where: its registration has been procured by fraud or misrepresentation; it has been used for unlawful purposes or for purposes prejudicial to public peace, welfare or security; it fails to rectify the causes for suspension within the time limit set by the Agency; or it fails</p>	<p>internal governance and self-regulation that ensure transparency and accountability and to work together towards implementation of the same;</p> <p>v. Collaboration with concerned regional government bodies, establish an information centre that contains data on the number of organizations operating in the country, sectors and regions in which they operate, the number of their beneficiaries and members; analyse and disseminate the same through newspapers and websites;</p> <p>vi. Conduct research and advise the Government on the role of Organizations in the protection of Human Rights, democratization and development activities of the country;</p> <p>vii. Develop policy guidelines to ensure that the development activities undertaken by Organizations are to the extent possible aligned with the development plans issued by the government;</p> <p>viii. Without prejudice to the provisions of relevant laws, to exercise the powers of registration and authentication of documents with regard to Organizations;</p> <p>ix. The Agency may conduct an investigation into the activities of an organization to check whether it is carrying on its activities in accordance with the law. The investigation shall be launched on the basis of information the Agency ob-</p>
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	<p>to renew its license in accordance with Article 76 of this proclamation; commits a crime by violating the provisions of the criminal code or that of this Proclamation.</p> <p>ix. The Director General of the Agency shall decide over claims that have exhausted administrative stages and made to him in relation to the Agency's activities within 15 days</p>	<p>tained from Government organs, donors or the public, as well as information obtained by the Agency during the performance of its work.</p> <p>x. The Director General of the Agency may order the suspension of the organization if the organization fails to alter or rectify its practice after receiving a strict warning. The Board will decide that an organization which failed to make the necessary rectifications within three months following the suspension order shall be dissolved unless the Director General's suspension order has been lifted by the Board or is blocked by court order.</p> <p>xi. An Organization shall get a written approval of the Agency to open a bank account. The Agency shall respond to requests for such approval within five days from receipt of the request.</p>
Types of CSOs	<p>based on their nationality and source of funding:</p> <ul style="list-style-type: none"> - Ethiopian Charity/Society - Ethiopian Resident Charity/Society - Foreign Charity 	<ul style="list-style-type: none"> - Foreign Organizations - Local Organizations
Funding Restrictions	<ul style="list-style-type: none"> - Ethiopian Charity/Society: CSOs established by Ethiopians that attain less than 10% of their funding from international sources are referred to as Ethiopian Charities or Societies - Ethiopian Resident Charity/Society: CSOs established either by Ethiopians or other nationals that resided in the country and attain more than 10% of their funding from foreign donors - Foreign Charities: CSOs established abroad but registered in 	<p>There is no funding restrictions.</p>

	Ethiopia were referred to as Foreign Charities	
Fund Utilization	CSOs are required to allocate 70% of their budget to operational costs and the remaining 30% to administrative activities.	CSOs are required to allocate 80% of their budget to operational costs and the remaining 20% to administrative activities.
Activity Restrictions	<p>There is no activity restrictions for Ethiopian Charities/Societies whereas ERC/S and FC are restricted from working on:</p> <ul style="list-style-type: none"> i. the advancement of human and democratic rights; ii. the promotion of equality of nations, nationalities and peoples and that of gender and religion; iii. the promotion of the rights of the disabled and children's rights; iv. the promotion of conflict resolution or reconciliation; v. the promotion of the efficiency of the justice and law enforcement services; 	unless it is permitted with another law Foreign Organizations and Local Organizations which are established by foreign citizens which are residents of Ethiopia may not engage in lobbying political parties, engage in voters education or election observations.
Requirements for Registration and Licence Renewal	<p>I. a copy of the rules of the Charity or the Society and where applicable a document showing the act of constituting of a Charitable Trust or a Charitable Endowment;</p> <p>II. Such similar documents and duly completed forms as the Agency may require.</p> <p>Charities that are established abroad shall present:</p> <ul style="list-style-type: none"> I. duly authenticated certificate of registration showing its establishment from its country of origin; II. proof of the decision of its competent organ to operate in Ethiopia III. A letter of recommendation by the Embassy in which the Charity is incorporated or in the absence of such by a competent Government Organ in that country IV. A letter of recommendation from the Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia 	<p>I. The minutes of the formative meeting indicating the names, addresses and citizenship of the founders;</p> <p>II. Copy of the identity card or passport of the founders;</p> <p>III. The name of the organization and its logo, if it has one;</p> <p>IV. The objectives of the organization and its intended sector of operation;</p> <p>V. The Region where it intends to operate;</p> <p>VI. The Rules of the organization approved by the founders;</p> <p>VII. The Organization's address.</p> <p>Additional requirements for Foreign CSOs:</p> <p>VIII. Duly authenticated certificate of registration showing its establishment from its country of origin;</p> <p>IX. Duly authenticated resolution of its competent organ to operate in Ethiopia;</p> <p>X. Duly authenticated power of delegation of the country repre-</p>

	V. Power of attorney of the country representative	sentative; Letter of recommendation from the embassy in which the charity is incorporated or in the absence of such by a competent authority in the country of Origin from Ministry of Foreign affairs of Federal Democratic Republic of Ethiopia and; XI. A Work plan for a minimum period of two years.
Administration of Property	Charities and Societies can only dispose of property through the agency. When buying Immovable or special movable property the ownership of the property is both through the name of the agency and the CSO.	Civil Societies Organization can manage their property as they deem it fit.
Penalty Clause	The penalty clause in these proclamations provides individual as well as organizational liabilities of CSOs official in failure to comply with the conditions of the proclamation.	There is no penalty clause