

CSOs in Sustainable Development in Ethiopia: Past Practices and New Trajectories

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Abstract

We researched how CSOs working in the area of sustainable development responded to regulatory restrictions on advocacy work using Ethiopia as a case study. We found that the restrictive laws had a severe impact: many CSOs had to shut down or limit their operational capacity to service delivery only. Those that survived continued to

do advocacy work, disguised as service delivery. This shows that northern stakeholders should not adhere to a strict division between advocacy and service delivery in their funding policy. They also should focus on long-term CSO engagement and long-term CSO funding. In 2019, regulatory reform reopened political space to some extent. The new law envisions a greater role for self-regulation in the civil society sector while still maintaining some degree of State oversight through registration, reporting and funding allocation requirements. Despite these improvements, the sector is still in need of international support and consistent and reliable funding.

Keywords

civil society – sustainable development – environmental law – human rights – Ethiopia

1 Introduction

Civil society organisations (CSOs) play many critical roles in promoting sustainable development. The different roles of CSOs in ensuring sustainable development are widely recognised in international and national policies and academic literature.¹ The Sustainable Development Goals (SDGs), which were adopted by the UN General Assembly in 2015, have given due recognition to the importance of enhancing global multi-stakeholders partnerships, in general, and public-private and civil society partnerships, in particular, ‘to support the achievement of the Sustainable Development Goals in all countries, in particular developing countries’.² Many states give similar recognition to CSOs in their national legal and policy instruments. This is also the case in Ethiopia.

1 SDG 17.16 and 17.1, UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development 21 October 2015, A/RES/70/1. See also, African Civil Society Circle, The Roles of Civil Society in Localising the Sustainable Development Goals (Position Paper, ACSC 2016) <https://www.gppi.net/media/KAS_CS0_2016_Localizing_SDGs.pdf> accessed 14 November 2019; Bea S. Corella, Juan E.A. Nicolas and Tine Veldkamp, ‘Civil society and the 2030 Agenda: An initial study’ European Commission, January 2020, 11–13; Bridget M Hutter and Joan O’Mahony, ‘The Role of Civil Society Organisations in Regulating Business’ (Centre for Analysis of Risk and Regulation, London School of Economics and Political Science London 2004); Rachel Hayman, ‘The contribution of civil society to sustainable development in the Gulf and beyond’ (2019) 29(5) *Development in Practice* 645; Jelmer Kamstra, ‘Dialogue and Dissent Theory of Change 2.0 – Supporting Civil Society’s Political Role’ (Ministry of Foreign Affairs of the Netherlands Social Development Department 2017) 1.

2 SDG 17.16.

Despite this, CSOs working on sustainable development, and especially those asserting rights to land, environment and advancing the interests of Indigenous peoples, face increased political pressure and existential threats.³ Over the past few years, a significant number of states have used legislative and other mechanisms to limit the autonomy and freedoms of CSOs. States use propaganda and stigmatization, they intentionally misapply anti-terrorism and other legislation, and they impose restrictions on funding to directly hamper the rights and freedoms of CSOs.⁴

While constraints on civil society freedoms affect organisations of every kind, organisations working on sustainable development are uniquely affected in a number of ways. In this paper, we examine some of the unique ways in which these CSOs are impacted and what this means for national and global efforts at securing more sustainable development.

With reference to the example of Ethiopia, this paper explores the impact of shrinking civil society space on CSOs working on advancing sustainable development. While a great deal of scholarly attention has been given to the problem of CSO restrictions in the last few years,⁵ relatively little has been written on CSOs working in environmental and sustainable development fields and how restrictions affect them and their work.⁶ Examining the experience of Ethiopian CSOs reveals that CSOs working on sustainable development are uniquely disempowered by restrictive regulation, which not only harms CSOs but also hinders the achievement of sustainable development in a rapidly developing country.

In 2019, Ethiopia repealed its repressive civil society law and introduced new legislation that aimed, in part, at addressing historic constraints in the sector. Using Ethiopia as a case study, allows us to both examine the impact of closed

3 International Center for Not-for-Profit Law (ICNL) & World Movement for Democracy Secretariat at the National Endowment for Democracy (NED), *Defending Civil Society* (ICNL Report, 2nd ed 2012).

4 UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, thirty-fifth session 6–23 June 2017, A/HRC/35/28.

5 See, for example, Antoine Buyse, 'Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights' (2018) 22 *The International J of Human Rights* 966; Chris van der Borgh and Carolijn Terwindt, 'Shrinking Operational Space of NGOs – a Framework of Analysis' (2012) 22 *Development in Practice* 1065; ICNL (n 3). For an overview of the legal and regulatory measures used to curtail international funding see: Douglas Rutzen, 'Civil Society under Assault' (2015) 26 *J of Democracy* 4, 30–31. In relation to Ethiopia see: Saskia Brechenmacher, *Civil Society under Assault: Repression and Responses in Russia, Egypt, and Ethiopia* (Carnegie Endowment for International Peace 2017).

6 On NGOs and natural resource management in Ethiopia, see: Adenew T Ariti, Jasper van Vliet, Peter H Verburg, 'What Restrains Ethiopian NGOs to Participate in the Development of Policies for Natural Resource Management?' (2018) 89 *Environmental Science & Policy* 292.

civil society space on sustainable development and to see some of the ways in which these closures can be addressed. We ask whether the new law does enough to allow CSOs to emerge from repression, to become a thriving sector. While this paper focuses on the impact of a repressive regulatory environment on civil society in the sustainable development sector, our focus on Ethiopia allows us to also see the impact of regulatory transition on civil society and to see whether years of oppression can be addressed through legislative change.

Drawing on interviews, on-site observations and focus group discussions as well as CSO publications, government reports and regulatory documentation, we find that CSOs are often able to continue their work, even in the most repressive conditions. We examine the impact of repressive law on the work of sustainable development CSOs, how they survive and continue to work in difficult conditions, and what is needed – especially from northern governments and CSOs – to support these organisations.

The findings in this paper are based on an analysis of the relevant legislation and literature and empirical research conducted in Ethiopia and Europe, between June 2018 and May 2019. The empirical research consisted of semi-structured interviews with key CSO representatives. We interviewed 23 CSOs, a representative of the government CSO Agency, two trade union representatives, and two researchers. We also conducted two interviews with the Dutch Embassy in Addis Ababa. In addition to these in-depth interviews, our empirical research included situational observations with three selected CSOs in different regions in Ethiopia, conducted by master's students who each spent a week with a CSO, observing their daily activities. Furthermore, we conducted focus group discussions in Ethiopia in May 2019 with 60 stakeholders, involving not just CSO representatives, but also government officials, trade union representatives, church staff, and academics.

This paper is structured as follows. In section 2, we introduce the evolution of CSOs in Ethiopia. In section 3, we highlight the concept of sustainable development in the Ethiopian context. In section 4, we examine the evolving roles of CSOs in sustainable development in Ethiopia from a comparative national perspective. Here, we will briefly outline the restrictive CSO laws that were put in place in Ethiopia in 2009. In section 5, we discuss the key roles of CSOs in achieving sustainable development in detail and we show how these were impacted by the restrictive laws. Then, in section 6, we scrutinize the key changes introduced in the new CSOs law of 2019 and its prospects and challenges in light of our empirical findings and the literature review. Section 7 concludes.

2 CSOs in Ethiopia: Definition and Historical Overview

The term ‘civil society’ can be very widely understood.⁷ Kumar argues that civil society refers to something “found in the economy and in the polity; in the area between the family and the state, or the individual and the state; in non-state institutions which organize and educate citizens for political participation; even as an expression of the whole civilizing mission of modern society.”⁸ Kamstra defines civil society in a similar fashion “as the space between government, the market (businesses) and private life (family and friends) where citizens can organise themselves to pursue goals unrelated to personal or financial gain, which concern a wider group of people and are not necessarily taken care of by government.”⁹ The term civil society can refer to formal non-governmental organisations and to informal community based organisations or movements. It includes labour unions, church organisations professional associations and many others.¹⁰

For the purpose of this paper, however, we focus on formal, registered non-governmental organisations (s) and, to a much more limited degree, to trade unions and faith-based organisations. The reason for this fairly narrow focus is that we sought to investigate the impact of Ethiopian law on those organisations the law directly sought to regulate. This has not changed significantly with the adoption of the new civil society law in 2019. The new law defines CSOs as follows:

“Civil Society Organization” (hereafter called ‘Organization’) means a nongovernmental, non-partisan entity established at least by two or more persons on voluntary basis and registered to carry out any lawful purpose, ... [including] mass based societies, professional associations and consortiums.¹¹ This definition excludes informal traditional institutions like ‘Edir’ and ‘Equb’, organisations formed under other laws,¹² and religious institutions.¹³

7 Thomas Carothers and William Barndt, ‘Civil Society’ (1999–2000) *Foreign Policy* 117, 19.

8 Krishan Kumar, ‘An Inquiry into the Usefulness of an Historical Term’ (1993) 44 *The British Journal of Sociology* 3, 383.

9 Kamstra (n 1).

10 Carothers and Barndt (n 7).

11 FDRE Organizations of Civil Society Proclamation No. 1113/2019, art 2(1).

12 In this regard, trade unions, cooperatives, and bar associations can be cited as good examples.

13 FDRE Organizations of Civil Society Proclamation (n 11) art 3(3).

This narrow focus in Ethiopian law can be better understood in light of the historical development of CSOs in Ethiopia. Modern CSOs are a relatively recent development in Ethiopia,¹⁴ compared to religious institutions and traditional self-help groups, such as *Edirs*, *Equbs*, that have a long history in the country.¹⁵ Some CSOs began to operate as faith-based organisations in the 1930s, while other welfare organisations like the Red Cross have had some presence in Ethiopia since the 1950s.¹⁶ For the most part, however, modern CSOs were only established in Ethiopia in the second half of the twentieth century, after the adoption of the Civil Code of the then Empire of Ethiopia in 1960.¹⁷ A large number of CSOs began operating in Ethiopia in the wake of the famines in the 1970s and 1980s which compelled the Derg (the then military junta) to accept international organisations and foreign aid assistance.¹⁸ To a large degree, these newly established or arrived organisations worked on relief and humanitarian services. The number of CSOs increased steadily again after the downfall of the Derg regime in 1991.¹⁹

One can broadly classify the historical development of civil society in Ethiopia into three periods. The first is the period of the Ethiopian Empire regime (1137–1974), which featured the development of informal, traditional organisations. However, since the 1960s, a growing number of modern CSOs were established;²⁰ including trade unions, professional associations,²¹ and relief organisations.

14 Tsehai Wada, The Regulatory Framework for Civil Society Organizations in Ethiopia, paper presented at the national conference on “Creating an Enabling Environment for Civil Society in Ethiopia” on 30th October 2007, Addis Ababa, 3.

15 *ibid* 2–3; Jeffrey Clark, Civil Society, NGOs, and Development in Ethiopia: A Snapshot View (The World Bank); Aleign Shibabaw, The Role of Civil Society Organizations (CSOs) in Environmental Protection: The Case of MELCA Ethiopia and World Vision Ethiopia (Unpublished Masters’ Thesis, Addis Ababa University, 2016) 45; International Center for Not-for-Profit Law, Ethiopia Philanthropy Law Report (ICNL 2018) 10.

16 Civic Freedom Monitor: Ethiopia, available through <https://www.icnl.org/resources/civic-freedom-monitor/ethiopia> (accessed 05 May 2020). See also Wondwosen Teshome Bahiru, ‘Civil Society and Democratization in Africa: The Role of the Civil Society in the 2005 Election in Ethiopia’ (2009) 3 *International Journal of Humanities and Social Sciences* 1598, 1601.

17 See Clark (n 15), 7–8; Shibabaw (n 15).

18 Kendra E Dupuy, James Ron and Aseem Prakash, ‘Who Survived? Ethiopia’s Regulatory Crackdown on Foreign-Funded NGOs’ (2015) 22 *Review of International Political Economy* 419, 424.

19 Clark (n 15).

20 Civic Freedom Monitor (n 16).

21 *ibid*; Shibabaw (n 15).

The second is the period of the communist Derg regime, spanning from 1974 to 1991. This period saw the development of politically-affiliated mass-based organisations in the form of peasant associations, youth associations, women's associations and cooperatives. It is also a period that saw the demise of other autonomous CSOs due to the ban on freedom of association or the coopting of almost all independent professional organisations and interest groups.²² There were no indigenous or foreign CSOs registered during this period.²³ However, as stated above, the famines of the 1970s and 1980s compelled the regime to allow some foreign relief and humanitarian organisations to operate in Ethiopia. By the late 1980s, there were approximately sixty CSOs operating in the country of which the great majority were international organisations.²⁴

The third period spans from 1991 to 2009, during which CSOs started to blossom as a result of the opening of political space, following the downfall of the Derg in May 1991.²⁵ In this period, basic liberal rights and freedoms such as the rights to freedom of expression, association and assembly were given due recognition in both the Transitional Period Charter of Ethiopia (1991) and the subsequently adopted FDRE Constitution (1994). As a result, this period saw a substantial increase in the number, size and roles of CSOs in Ethiopia.²⁶ More than three thousand CSOs were reported to have been formally registered at the Federal level prior to the adoption of the restrictive Charities and Societies Proclamation (CSP) in 2009.²⁷ The impact of this law will be discussed further on.

3 Sustainable Development in Ethiopia: the Law and Policy Framework

For more than a decade, the Ethiopian government has been pursuing an aggressive and rapid programme of growth and development. The government sees significant growth and development as critical to addressing many of the

22 Brechenmacher (n 5) 66.

23 See FDRE Ministry of Justice Explanatory Note on Charities and Societies draft Legislation (2008) 1.

24 Dessalegn Rahmato, Akalewold Bantirgu and Yoseph Endeshaw, *CSOs/NGOs in Ethiopia: Partners in Development and Good Governance*, A Report Prepared for the Ad Hoc CSO/NGO Task Force (Addis Ababa 2008) 12.

25 *ibid*; Civic Freedom Monitor (n. 16); Shibabaw (n 15); Wada (n 14).

26 Civic Freedom Monitor (n 16).

27 This figure does not include traditional groups that do not require registration and CSOs registered at regional level, if any. See FDRE Ministry of Justice (n 23) 2.

enormous problems it faces, including poverty, food instability, low levels of literacy, high mortality rates, among others. While the government has set itself very high targets for growth and development, it has also committed itself to the idea of sustainable development.

The FDRE Constitution provides for both a right to sustainable development and a right to a clean and healthy environment. The FDRE Constitution recognizes the developmental right of citizens “to improved living standard and to sustainable development”²⁸ and the environmental right of all persons “to a clean and healthy environment”.²⁹ In addition to these substantive rights, the Constitution recognizes the procedural right of citizens “to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.”³⁰

With the expressed intent of implementing these constitutionally guaranteed substantive and procedural rights, Ethiopia has adopted the Environmental Impact Assessment (EIA) Proclamation in 2002.³¹ In its preambular paragraphs, this Proclamation recognizes the instrumental values of EIA in “harmonizing and integrating environmental, economic, cultural and social considerations into a decision making process in a manner that promotes sustainable development”³² and in ensuring administrative transparency, accountability, public and community participation in planning and decision making on development matters that may affect them and the environment at large.³³

In addition to these constitutional and legislative provisions on environment, sustainable development and participation, the State put out the Environmental Policy of Ethiopia (the EPE) in 1997 to broadly outline the policy framework for new environmental law and practice. The EPE’s overall policy goal is “to improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through the sound management and use of natural, human-made and cultural resources and the environment as a whole so as to meet the needs of the present generation without compromising the ability of future generations to meet their

28 Constitution of the Fédéral Democratic Républic of Ethiopia (hereafter, the FDRE Constitution), Article 43 (1).

29 *ibid* art 44 (1).

30 *ibid* art 43 (2).

31 FDRE Environmental Impact Assessment Proclamation (the EIA Proclamation) No. 299/2002.

32 *ibid* para 2.

33 *ibid* preamble, para 4.

own needs.”³⁴ Hence, the EPE states that the promotion of sustainable development is one of its primary goals along with improving and enhancing the health and quality of life of Ethiopians.³⁵

The EPE includes a number of specific goals such as ensuring that essential ecological processes and life support systems are sustained; that biological diversity is preserved; and that renewable natural resources are used in such a way that their regenerative capabilities are maintained. The EPE further reiterates that the needs of future generations must not be compromised and that the benefits of exploitation of non-renewable resources are also extended to future generations. Other specific goals include preventing pollution of land, air and water in the most cost-effective way so that the cost of effective preventive intervention does not exceed the benefits. The EPE also addresses the issue of consultation in environmental matters and has the goal of ensuring the empowerment and participation of the people and their organisations at all levels in environmental management activities; and enhancing public awareness and understanding about the link that exists between development and environment.³⁶

In line with its overall and specific policy objectives, the EPE provides a set of ‘Key Guiding Principles’, including every person’s right to live in a healthy environment; the principles of sustainable development and public participation; the principles of integration, prevention, precaution, equity, conservation, EIA, and polluter pays principle.³⁷

Ethiopia is also a signatory to a number of international environmental agreements like the United Nations Framework Convention on Climate Change and the Rio Declaration on Environment and Development, which have bearing on the sustainable development efforts of the country.³⁸ Principle 10 of the

34 FDRE Environmental Policy (Addis Ababa 1997) 4. With this wording, the EPE captures the essence of the goal of sustainable development in its broad sense, as provided in the Brundtland Report, namely: development that meets the needs of the present without compromising the ability of future generations to meet their own needs. World Commission on Environment and Development, *Our Common Future* (OUP 1987), Chapter 2, para. 1.

35 Anon, *Environmental Policy of Ethiopia*, <https://thereddesk.org/sites/default/files/environment_policy_of_ethiopia_1.pdf> accessed 14 November 2019.

36 See the discussion in Fikremarkos Merso Birhanu, ‘Country Report for Ethiopia: Green Growth, Environment and Sustainable Development in Ethiopia’ [2014] *IUCN Academy of Environmental Law E-Journal* 164.

37 See FDRE Environmental Policy (n 34) 4–6.

38 See United Nations Conference on Sustainable Development (Rio+20): National Report of Ethiopia (Addis Ababa 2012) 22–24; Rio Declaration on Environment and Development (14 June 1992) UN Doc. A/CONF.151/26 (Vol. 1), 31 ILM 874; United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

Rio Declaration states that “environmental issues are best handled with the participation of all concerned citizens, at the relevant level.”

The Ethiopian government has also accepted and endorsed the 2030 Sustainable Development Agenda and the SDGs, which it sees as an integral part of its national development framework.³⁹ The Agenda for Sustainable Development stipulates that environmental, economic and social interests must be addressed together. The SDGs encourage governments to ensure that CSOs are able to effectively contribute to achieving sustainable development. This has been laid down in SDG 16 and 17, which provide for enhanced cooperation with civil society as a key partner.⁴⁰ SDG 16 is committed to promoting “peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable institutions at all levels”.

It is important to stress the legal significance of these and other international environmental agreements ratified by Ethiopia. In its Article 9(4), the FDRE Constitution has recognised all international agreements ratified by Ethiopia as an integral part of the law of the land. In addition, binding international human and environmental rights ratified by Ethiopia can also provide authoritative guide to the interpretation of the fundamental rights and freedoms enshrined in chapter three of the FDRE Constitution.⁴¹

What all of this suggests is that the government has committed to a sustainable development agenda and it understands this as having three key aspects: first, development ought to be inclusive and benefit all Ethiopians, second, development must not harm and should ensure a healthy environment in the interests of present and future generations, and third, public participation is an important element of the development process.

4 The Roles of CSOs in Ensuring Sustainable Development in Ethiopia under Restrictive Laws

Despite its commitment to sustainable development, Ethiopia faces many hurdles and barriers to achieving its development goals. In our interviews with

39 National Plan Commission, *The 2017 Voluntary National Reviews on SDGs of Ethiopia*, <<https://sustainabledevelopment.un.org/content/documents/16437Ethiopia.pdf>> accessed 14 November 2019.

40 SDG (n 1) Goals 16 & 17.

41 Article 13(2) of the FDRE Constitution stipulates: The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.

CSOs working in Ethiopia, the interviewees identified a wide range of problems related to sustainable development in the country. These included land degradation, soil erosion, soil fertility loss; pollution (air, water, soils, and noise pollution), forest degradation and deforestation, natural resources depletion, biodiversity loss, urban waste, climate change, drought vulnerability, population pressure, land fragmentation, overgrazing, poverty induced resource destruction, and unsustainable investment.

CSOs play a number of critical roles in realising sustainable development.⁴² First, as service delivery agents, CSOs play an important role in contributing to the reduction of poverty and the delivery of basic services. Second, they participate in the development of sustainable development laws and policies. Third, CSOs play a representational role – they are the voice of the poorest and most marginalised citizens, whose rights and environments are often trampled in the pursuit of development and growth. Fourth, CSOs are data collectors and reporters. Fifth, CSOs are agents of accountability as they hold both the state and businesses to account regarding their plans and implementation.

However, CSOs face enormous external and internal constraints in Ethiopia that prevent them from engaging in the work needed to address these problems, partly as a result of the government adoption of highly restrictive CSO laws in 2009 and partly due to internal problems subsisted in the civil society sector. With these constraints in mind, we now discuss the roles of CSOs in Ethiopia from a historical point of view.

4.1 *Before the Adoption of the Restrictive CSO Laws in 2009*

As discussed above, modern CSOs only became meaningfully active in Ethiopia in the 1990s. As of the late 1990s, three important changes occurred in the civil society sector. First, the number of CSOs steadily grew. Second, local and national organisations became stronger and more active and the number of international CSOs began to decline. Third, CSOs increasingly shifted their work and focus away from emergency relief and humanitarian aid and began to work on human rights, governance and advocacy programs, voter education, environmental advocacy, and public policy investigation and monitoring activities.⁴³ During this period, CSOs were allowed to contribute to sustainable development in a number of ways, including through resource mobilizing, implementation of projects and engaging in advocacy.

42 These roles, which are discussed in greater detail below, are adapted from the roles identified by African Civil Society Circle (n 1).

43 Rahmato, Bantirgu and Endeshaw (n 24).

4.2 *After the Adoption of the Restrictive CSO Laws*

Prior to the adoption of the CSP in 2009, Ethiopia had a young but active CSO sector. Data collected in 2006/2007 showed that there were a total of 3,737 registered CSOs,⁴⁴ which were involved in a wide range of activities related to sustainable development and governance. However, starting in 2009, the government adopted legislation that sought to restrict the roles of CSOs. These legislative measures included the 2009 Charities and Societies Proclamation (CSP), which is the focus of this discussion, and the 2009 Anti-Terrorism Law. Restrictions were also imposed by the 2008 Mass Media and Freedom of Information Proclamation and the 2012 Telecom Fraud Offence Proclamation.

Many see the 2005 National Election as a critical turning point in the State's approach to the civil society sector. For the first time, CSOs played a significant and active role in the build-up to the national elections.⁴⁵ Prior to this, most organisations had primarily worked on emergency relief, human development or welfare. In the build-up to the 2005 parliamentary elections, however, CSOs actively engaged in voter education, in hosting debates and dialogues between political representatives and in deploying observers to voting stations.⁴⁶ Prior to the elections, opposition parties polled well, a threat to the incumbent political party, the Ethiopian People's Revolutionary Democratic Front (the EPRDF). When opposition parties did not fare as well as expected in the elections, protests broke out across the country. The EPRDF accused CSOs of being partisan and instigating post-election unrest.⁴⁷

In the build-up to the 2010 general elections, the Ethiopian government passed legislation that directly sought to prevent the kinds of activities the ruling party believed threatened its power in the 2005 elections. This new legislation included the CSP. The Preamble to the CSP expressly stated that it was enacted "to ensure the realization of citizens' right to association" enshrined in the Ethiopian Constitution and "to aid and facilitate the role of CSOs in the overall development of Ethiopian peoples".⁴⁸ Despite its stated goals, however, the CSP introduced a number of regulatory tactics designed to restrict and control the activities and funding of CSOs and to significantly increase state oversight over their activities.

44 FDRE Ministry of Justice (n 23).

45 Bahiru (n 16).

46 Brechenmacher (n 5) 67.

47 Interview with CSO, 31 July 2018 (DG01). See also Betel Bekele Birhanu, *Transnational Human Rights Pressure at Critical Political Junctures and the Behaviour of Strategically Important, Yet "Vulnerable," Target States: Insights from the Horn and East Africa* (University of Zurich, Faculty of Arts 2018).

48 FDRE Charities and Societies Proclamation (CSP) No 621/2009, Preamble, paras 1 & 2.

First, the CSP made registration and licensing mandatory for all CSOs.⁴⁹ All existing and new CSOs were required to register within one year after the coming into effect of the CSP.⁵⁰ A regulatory body, the Charities and Societies Agency (CSA), was created with the power to register CSOs and it was given a wide discretionary power to grant or refuse an application for registration and renewal of license and to suspend or cancel registration of CSOs.⁵¹

Second, the CSP categorised CSOs into three groups with different far-reaching implications, namely Ethiopian Charities and Ethiopian Societies, Ethiopian Residents Societies and Ethiopian Residents Charities, and Foreign Charities.⁵² The classifications were based on sources of income, residency, nationality of members and managers, and the governing law of incorporation and control of the organisation. This classification system had far-reaching implications for the formation, operations, work and funding of CSOs. For example, Ethiopian Resident and Foreign CSOs were not allowed to lodge appeals to the court if aggrieved by a decision of the CSA to refuse registration or renewal, or to cancel registration.⁵³

The third, and probably most important, restriction was that Ethiopian Resident and Foreign CSOs could not engage in advocacy work, or work on matters relating to the advancement of human and democratic rights; the promotion of equality of nations, nationalities and peoples and that of gender and religion; the promotion of the rights of the disabled and children's rights; the promotion of conflict resolution or reconciliation; and the promotion of the efficiency of the justice and law enforcement services.⁵⁴

Ethiopian CSOs were not subject to the same operational restrictions on advocacy work or work on rights and other listed areas. However, Ethiopian CSOs were not allowed to generate more than ten percent of their funding from foreign sources (this is called the 90/10 restriction). In other words, Ethiopian CSOs had to raise almost all of their funds (90%) from domestic sources. Generating income domestically was extremely difficult. After the 2005 election, the state had launched a propaganda campaign against the civil society sector, labelling them as opposition political parties in disguise. This discouraged potential domestic donors as they did not want to be seen to be associated with CSOs.⁵⁵

49 *ibid* art 64.

50 *ibid* art 11(2).

51 *ibid* arts 69, 76, 78 and 80.

52 *ibid* art 2(2-4).

53 FDRE Ministry of Justice (n 23) 39-40.

54 CSP (n 48), art. 14(2)(j), (k), (l), (m) and (n).

55 Donors cannot heed the risk of being identified by donating anonymously because CSOs are prohibited from receiving anonymous donations and they must submit yearly

As a result, the majority of CSOs reregistered as Ethiopian residents because of this funding restriction.

The fourth restriction imposed by the CSP was that all charities and societies falling within the scope of its application, regardless of their classification, were required to allocate an amount of not less than 70 per cent of their expenses in the budget year to operational costs and to allocate not more than 30 per cent to 'administrative activities'.⁵⁶ This so-called 70/30 regulation was designed "as a mechanism to ensure that the majority of project funding reaches the intended beneficiaries rather than going toward excessive overhead costs".⁵⁷ However, this regulation had a number of perverse impacts on the work and activities of CSOs. 'Administrative costs' were defined broadly and vaguely.⁵⁸ This broad definition of administrative costs prevented CSOs from engaging in a wide range of activities including conducting and commissioning research, engaging in networking and offering training to their employees.⁵⁹ In 2014, the CSA tried to relax the burden of the 70/30 regulation on those CSOs working on relief and service delivery by re-classifying some of the expenses (such as the salaries of their field officers, transportation costs, and training related expenses) as operational rather than administrative expenses.⁶⁰ However, Ethiopian CSOs working on environmental policy lobbying, advocacy and other rights-focused activities were tacitly excluded from the benefits of the amendment.

5 The Impact of CSOs on Achieving Sustainable Development in Ethiopia under Restrictive Laws

In this section we show how the various restrictions provided in the CSP affected the ability of CSOs to play the five roles attributed to CSOs in securing sustainable development.

financial audits and budget reports; CSP (n 48) art. 77(3).

56 Directive to provide for income generating activities by charities and societies no. 7/2011, art. 88.

57 Brechenmacher (n 5) 79.

58 'Administrative costs' shall mean those costs incurred for emoluments, allowances, benefits, purchasing goods and services, travelling and entertainments necessary for the administrative activities of a Charity or society: CSP (n 48), art. 2(14).

59 Interviews with CSOs, 2 August 2018 (DG03), 2 August 2018 (DG04), 14 August 2018 (DG07), 4 August 2018 (DG08).

60 Amendment of the Charities and Societies Agency's Directive to Determine the Operational and Administrative Costs of Charities and Societies No. 2/211 (Amendment 2014).

5.1 *CSOs as Service Providers*

CSOs roll out programmes, build infrastructure, provide emergency relief, develop aid programmes, and provide education as well as training among many other service delivery activities.⁶¹ These activities help to realise sustainable development both by extending the benefits of development to those most in need and by developing approaches to development that are sustainable and not environmentally harmful. They ensure that those who ought to benefit from development, do in fact benefit. CSOs also have a role to play in identifying needs, monitoring whether the delivery of services addresses those needs and in developing new and creative solutions to addressing those needs.⁶²

While the CSP limited the activities of CSOs in relation to advocacy, it created no direct operational restriction on CSOs engaging in service delivery works. In principle, all CSOs could still play this role under the CSP and many organisations have worked tirelessly to provide basic services to communities all over Ethiopia, rolling out services, building infrastructure and addressing the immediate and urgent needs of communities.

Many organisations were compelled to change their work focus and priorities to service delivery activities due to the funding and operational restrictions imposed by the CSP. As a result “the role of the conventional CSOs in service delivery and development has increased” because of the adoption of the restrictive CSP.⁶³ However, despite the relative freedom of CSOs in this regard, the sector nevertheless has faced significant obstacles.

First, it has been argued that the 2009 CSP likely resulted in a far smaller civil society sector than might have existed had the Proclamation not been passed. Bekele has argued that the number of registered CSOs in the country – approximately 3000 – is very small given the size and population of the country. He compared this to the number of CSOs operating in Uganda (more than 12 500), Kenya (86 000) and South Africa (100 000).⁶⁴ While it is impossible to know what the civil society sector in Ethiopia would have looked like without the 2009 CSP, these numbers suggest that it is a sector that has not grown as it may have.

61 See the discussion of the role of CSOs and their role in, among other things, addressing famines in Tony Roberts, *Closing Civic Space and Inclusive Development in Ethiopia* (2019 IDS Working Paper 22).

62 African Civil Society Circle (n 1) 7.

63 Yntiso Gebre, ‘Reality Checks: The State of Civil Society Organizations in Ethiopia’ (2016) 20 *African Sociological Review* 2, 21.

64 Eshetu Bekele, ‘The Role and Contributions of CSOs in Achieving the GTP/SDGs in Ethiopia’ in Dessalegn Rahmato and Meheret Ayenew (eds.), *Challenges and Opportunities for Inclusive Development in Ethiopia* (Forum for Social Studies 2018) 157.

The law envisioned a strict division between service delivery and advocacy. This notional division causes its own problems for the work of CSOs on sustainable development. This is because CSOs working on service delivery, who develop approaches to their work (for example on agriculture or forestry) that prove more sustainable than common practices, are denied the opportunity to scale up their practices. They cannot engage in advocacy work to develop new policies to reflect new practices. The 90/10 restriction on funding and the 70/30 cost regulation also constrained the service provision activities of CSOs. While the former restriction constrained the activities of Ethiopian CSOs specifically, the latter applied across the board although it had more severe consequences on local CSOs because of their already precarious position in terms of access to resources. What is more, the CSP prevented civil society networking, limiting the extent to which CSOs could share lessons and expand programs developed through their service delivery work. This is because costs of networking activities was categorized as administrative expenses and as a result, few organisations have had the funds to build partnerships with other sustainable development CSOs. Some networking organisations were even compelled to terminate their operations because of the financial constraints.⁶⁵ One interviewee stated that, as a result of weak networks or lack of networks, CSO work on sustainable development is haphazard.⁶⁶

This lack of strong collaboration not only meant that sustainable practices were often limited to local contexts, but also that CSOs were not collaborating on issues that demand a national response, nor was there any collaboration to ensure critical environmental issues were being addressed.

While CSOs were not collaborating with each other, they also reported little collaboration with government. Interviewees reported again and again that the government did not see CSOs as partners in achieving sustainable development,⁶⁷ but rather as gap-fillers, rolling out services in circumstances when the state could not.

5.2 *CSOs as Policy Advocates*

CSOs support governments in developing policies, laws and programmes that advance a sustainable development agenda. They provide expertise and experience, learnt from best practices around the world. As participants in law-making processes, CSOs advocate for greater focus on issues of sustainability

65 Interview with CSO, 14 August 2018 (DG07).

66 Interview with CSO (n 59), 2 August 2018 (DG03).

67 Interview with CSO, 1 August 2018 (DG02), interview with practitioner and researcher, 2 November 2018 (DG16).

in its multidimensional facets and for an awareness of regional and global changes and challenges that may impact domestic policy agendas.

The CSP stipulated that organisations that received more than ten percent of their funding from foreign sources and those registered as foreign or Ethiopian resident organisations could not engage in a wide range of activities including advocacy work. These organisations, which constituted the considerable majority of registered CSOs under the CSP,⁶⁸ could play no role in developing and working on sustainable development law and policy. Many shifted their activities to technical development and local service delivery work, moving away from any issues that could be construed as politically sensitive,⁶⁹ while many other CSOs were forced to terminate their operations, mainly, because of financial problems.⁷⁰ CSO officials reported that they were not consulted or included in government discussions or planning.⁷¹ Despite the fact that all CSOs were obliged to report on their activities annually, CSO staff believed that the government had little idea of what work CSOs were engaged in. Their expertise was never sought nor accepted.

While this diminished role for CSOs might have a number of negative implications for sustainable development, a worrying one that emerged in our research was that a number of civil society actors began to see themselves in the same, jaundiced way they were seen by the state. Each CSO employee was asked what they saw as the role of CSOs in advancing or securing sustainable development and a number of them responded that the state was responsible for sustainable development and their role is to fill the gaps left by the state.⁷² A well-recorded phenomenon in the literature on civil society suppression is that civil society begins to police and silence themselves to avoid reprisal.⁷³ In our interviews, however, we found that this internalization of oppressive practice applied not only to the ways in which CSOs chose to work but also to how they envisioned themselves as a sector. A number of CSOs indicated that their role was not to set the agenda for sustainable development, shape or challenge policy or advance the interests of the vulnerable in development planning, but

68 Solomon Goshu, Resurrecting the hapless CSOs in Ethiopia, *The Reporter*, 24 June 2017, <<http://www.thereporterethiopia.com/content/resurrecting-hapless-csos-ethiopia>> accessed 14 November 2019; Brechenmacher (n 5).

69 Brechenmacher (n 5), 80; Interview with researcher, 1 November 2018 (DG13).

70 Interview with CSO, 3 August 2018 (DG05). See also Gebre (n 64) 7.

71 One interviewee mentioned that before 2009 there were many dialogue forums; after 2009 such efforts are non-existent. Interview with CSO, 2 August 2018 (DG04).

72 Interviews with CSOs, 2 August 2018 (DG04), 30 October 2018 (DG10). Interview with researcher, 1 November 2018 (DG13).

73 Buyse (n 5); Amnesty International, *Laws Designed to Silence: Global Crackdown on Civil Society Organizations* (Report, 2019).

rather to follow the State's lead and to work within the development framework established by the State.⁷⁴

This had a number of impacts on CSOs working on sustainable development issues.⁷⁵ The prohibition on work on advocacy and human rights meant the majority of CSOs could not work with government or communities on policy development, on assessing the environmental regulatory framework or on holding government to account in its implementation of its laws. As mentioned earlier, the legal environment compelled many CSOs to shift their focus from governance to service delivery. Before the CSP came into force, an interviewee said, their organisation used to work on governance issues focusing on attitudinal change and raising peoples' awareness and demand for their rights.⁷⁶ The interviewee indicated, however, that the adoption of the CSP in 2009 compelled the organisation to part with these advocacy and rights-focused activities and to realign its focus on infrastructure, such as irrigation and construction of health posts.⁷⁷ Similarly, some of the CSOs who used to work on environmental literacy and advocacy were not able to do so once they were re-registered as Ethiopian resident CSOs and instead could only work on matters related to conservation and rehabilitation.⁷⁸ One interviewee informed us that their work is now limited to awareness raising and highlighting best practices, they do not challenge existing policies.⁷⁹ According to the interviewees, such advocacy work is essential and needed in a country where the lack of a comprehensive, enforceable policy and legal framework on sustainability is seen as the major barrier towards achieving sustainable development.⁸⁰

As discussed in section 3, Ethiopia has a wealth of law on environmental and developmental matters. Many of the CSO representatives interviewed stated that the law is adequate, but that it is poorly implemented⁸¹ and enforced.⁸² For example, the FDRE Constitution guarantees the rights of those affected

74 Interview with CSO, 30 October 2018 (DG10); interview with researcher, 1 November 2018 (DG13).

75 See Interviews with CSOs (n 47), 2 August 2018 (DG04), 3 August 2018 (DG05), 14 August 2018 (DG06), 14 August 2018 (DG07), and 15 August 2018 (DG08).

76 Interview with CSO, 1 August 2018 (DG02).

77 *ibid.*

78 Interviews with CSOs, 2 August 2018 (DG03), 14 August 2018 (DG07), and 15 August 2018 (DG08).

79 Interview with CSO, 2 August 2018 (DG03).

80 Interviews with CSOs, 8 August 2018 (DG04), 1 August 2018 (DG02), and 2 August 2018 (DG03).

81 Interviews with CSOs, 1 August 2018 (DG02), 2 August 2018 (DG04), 3 August 2018 (DG05), 15 August 2018 (DG08), and 12 October 2018 (DG09).

82 Interview with CSO, 14 August 2018 (DG06).

by a decision to be included in the decision-making process (art 43(2)). In practice, however, in a number of critical areas of development – including the building of hydro-electric dams and the leasing out of large areas of agricultural land to investors – individuals and communities affected by decisions have been excluded from participating, denied access to information and have sometimes been forcibly removed.⁸³ One interviewee mentioned that expressing public concern for the environmental impacts of those projects or investments is perceived as anti-development.⁸⁴ Moreover, the laws regarding participation are not well defined.⁸⁵ The laws do not recognize the role of CSOs in sustainable development.⁸⁶

A lack of coordination and institutional integration, not only among governmental bodies but also between government and CSOs, was identified by another interviewee as one of the main problems that hamper effective responses to environmental problems, which often leads to duplication of efforts.⁸⁷ The 30/70 cost formula that treated networking expenses as programme costs can take part of the blame for the poor or lack of coordination and networking between the different CSOs.

5.3 *CSOs as Voices of the Poorest and Most Marginalised Citizens*

CSOs play an invaluable role in ensuring that the voices of remote and marginalised peoples are heard (without necessarily speaking for them), providing a bridge between the state and communities who are affected by state policies and decisions. CSOs may play a crucial role in ensuring communities rights to be informed and consulted about decisions that affect them, not only by creating lines of communication between the state and communities, but also by providing training, building people's capacity and knowledge to ensure proper and informed engagement. This is a crucial role in respect of all sorts of development programmes that might affect communities. CSOs represent these communities at all levels of law-making and implementation.

83 Dessalegn Rahmato, 'The Perils of Development from above: Land Deals in Ethiopia' (2014) 12 *African Identities* 26, 33; Tsegaye Moreda, 'Listening to Their Silence? The Political Reaction of Affected Communities to Large-Scale Land Acquisitions: Insights from Ethiopia' (2015) 42 *The Journal of Peasant Studies* 517, 523; Jon Abbink, 'Land to the Foreigners': Economic, Legal, and Socio-Cultural Aspects of New Land Acquisition Schemes in Ethiopia' (2011) 29 *Journal of Contemporary African Studies* 513, 514.

84 Interview with CSO, 2 August 2018 (DG03).

85 *ibid.*

86 *ibid.*

87 Interview with CSO, 15 August 2018 (DG08).

Representing communities is not just a matter of ensuring these communities are heard, but also ensuring that they have all the necessary information about decisions that affect them and about changes to their environments. CSOs report on information they gather (see further below, section 5.4) or make information generated by scientists accessible to communities who may not have the necessary expertise to assess impact reports, draft laws or other materials.

With regard to environmental sustainability, CSOs not only represent marginalised and hard to reach communities, but also ensure the interests of nature and animals are considered in decision and policy-making. They may also represent those who fall outside of the usual jurisdiction and concern of decision-makers, such as communities across borders and future generations.

After the adoption of the CSP, however, CSOs who received more than ten per cent of their funding from foreign sources, were not allowed to participate in policy and decision-making regardless of whether they act in a representative capacity or not. As a consequence, the majority of the registered CSOs realigned their focus to service delivery as already stated. Ethiopian CSOs, on the other hand, could still work on advocacy and human rights and could, in theory, represent communities and ensure their participation in decisions that affect them. Deprived of foreign funding, many Ethiopian CSOs, however, struggled to secure adequate financial resources to do this essential work or to reach remote and marginalised communities far from the urban centres. Accessing remote communities was a problem for all CSOs as travel expenses were categorised as administrative costs (which had to be radically limited under the 70/30 rule).⁸⁸

Many of the CSOs interviewed reported that they had to radically reduce their operations in the face of funding restrictions. This has resulted in staff reduction and in the inability to keep highly skilled staff on board.⁸⁹ CSOs had to cut down on staff training and salaries, were forced to shut down some of their projects,⁹⁰ had to give up capacity-building and training activities,⁹¹ decrease the frequency of field visits to reduce their administrative expenditures on monitoring and evaluation,⁹² had to focus on specific regions and/or

88 Interview with CSO, 2 August 2018 (DG04).

89 As well as high staff turnover (DG05, DG08), and not being able to retain capable professionals (DG07).

90 Interview with CSOs, 2 August 2018 (DG03) and 3 August 2018 (DG05).

91 Interviews with CSOs (n 47), 2 August 2018 (DG04), and 14 August 2018 (DG07).

92 Interview with CSO (n 47).

activities,⁹³ or refocused their work on urban or semi-urban areas.⁹⁴ As a result, these organisations became physically removed from the communities most in need of their assistance. Without access to these communities, they could not keep them informed or represent them in decision-making processes.

CSOs not only faced financial barriers to their representation of communities in policy and decision-making. The Ethiopian government's adoption of the CSP, coupled with a sustained campaign against the civil society sector, meant the sector was viewed with suspicion and mistrust by the public.⁹⁵ An interviewee stated that the image ordinary citizens have of CSO employees is that they drive big cars, get huge salaries, and that they steal public resources.⁹⁶ Another interviewee stated that the perception is that CSOs are avenues for enrichment and accumulation of wealth.⁹⁷ While people's perception of CSOs vary from organisation to organisation or project to project,⁹⁸ the State's anti-CSO narrative undermined the ability of CSOs to represent communities, as such representation is only possible where CSOs have the trust and faith of those communities. In fact, this negative public perception towards CSOs can be partly attributed to practical weaknesses in the sector's internal accountability system.

5.4 *CSOs as Data Collectors and Reporters*

CSOs have an important role to play both in collecting data on development projects and plans and in helping communities obtain the skills and equipment to do their own monitoring and data-collection. Analysing and sharing this information with affected communities, responsible state bodies and with

93 Interviews with CSOs, 1 August 2018 (DG02), 2 August 2018 (DG04), 3 August 2018 (DG05), and 14 August 2018 (DG06).

94 Brechenmacher (n 5), 81.

95 Interview with CSO, 1 August 2018 (DG02): "NGOs are perceived as thieves, robbers and run by family members" and "tendency to view us as liars and cheats". Interview with CSO, 14 August 2018 (DG06): "wasteful in resource management, self-serving corrupt entities and donors' instruments". Interview with CSO, 15 August 2018 (DG08): "there is a perception that considers CSOs as if they had unlimited financial access, they spend money as they wish, uncontrolled, unaccountable".

96 Interview with researcher, 1 November 2018 (DG13). Similar views were expressed by some of the participants of the focus group discussion (Focus Group Discussion, Mekelle, Ethiopia, 26 and 27 May 2019).

97 Interview with CSO, 2 August 2018 (DG04).

98 Interview with CSO, 2 August 2018 (DG03).

the broader international community (particularly where projects fall under the SDGs or are internationally funded) is also an important part of this.⁹⁹

CSOs collect data on the roll-out of policies and programmes, monitoring their impact or effectiveness and looking at the way national policies affect particular environments and communities, among other impacts. CSOs also collect information on their own activities, assessing the successfulness of service delivery programmes and plans and looking for ways to scale-up successful initiatives.¹⁰⁰

CSOs in Ethiopia have not been prevented from collecting data and reporting on their own activities. Under the CSP, CSOs were obliged to report annually on their activities to the CSA. However, the CSP hindered this role in a number of ways. First of all, research was classified as an administrative cost. The need to add research costs to other administrative costs, such as wages and salaries, made it very challenging for some CSOs to stay within the 70/30 requirement.¹⁰¹ This discouraged research-based linkages between CSOs and universities.¹⁰² In practice, this meant that CSOs were often not able to support their activities with evidence based research.¹⁰³

Second, although CSOs reported on their findings and activities to the CSA and to the relevant government entities, some reported that they never received any feedback or engagement on these findings.¹⁰⁴ This lack of engagement and response was discouraging as the valuable work, research and information gathered by CSOs was not being used to inform the state's development activities. In our focus group discussion, however, some CSOs indicated that their data or reports sometimes showed up in government reports or statements, but without any recognition that the data had come from them.¹⁰⁵

99 "One of the most important roles that NGOs can play in global environmental governance is to provide up-to-date information on critical issues. Governments often turn to NGOs to fill research gaps that stand in the way of effective decision-making." Barbara Gemmill and Abimbola Bamidele-Izu, 'The Role of NGOs and Civil Society in Global Environmental Governance' in Daniel Esty and Maria Ivanova (eds) *Global Environmental Governance: Options & Opportunities* (2002). Forestry & Environmental Studies Publications Series. 8, 11.

100 *ibid.* See also United Nations Development Programme. 2016. Promoting Sustainable Development Through More Effective Civil Society Participation in Environmental Governance: A Selection of Country Case Studies from the EU-NGOs Project. UNDP, New York, 13.

101 Interview with CSO, 14 August 2018 (DG07).

102 Interview with CSO, 2 August 2018 (DG03).

103 Interviews with CSOs, 2 August 2018 (DG03), 2 August 2018 (DG04).

104 Interview with CSO, 20 September 2018 (E4).

105 Focus Group Discussion (n 97).

While CSOs were frustrated at this lack of recognition, this does indicate that (at least in some cases) the state was paying positive attention to CSO work.

5.5 *CSOs as Agents of Accountability*

Last but far from least, CSOs have an important role to play in holding the state to account in regard to its plans and implementation, ensuring the dissemination of information about state plans and decisions, and monitoring state performance. CSOs assess state conduct against the State's own laws, but also against international laws and standards. Holding the State to account can take many forms, including providing the State with its research and assessments, providing affected communities with information about state successes and failures, and publicizing state action or inaction to the wider world. CSOs might also hold states to account by challenging their actions in court or by bringing problematic conduct to the attention of international bodies and funders.

CSOs not only have a role to play in ensuring state accountability but may also have a role to play in ensuring corporate accountability.¹⁰⁶ This also may entail engagement between communities and business, gathering and distributing information, monitoring corporate conduct and legal compliance among other activities. All of these roles are critical to ensuring development that balances economic, social and environmental needs and interests and ensures that the state realises its stated goals of pursuing sustainable development.

In Ethiopia, a lack of public faith undermined the ability of CSOs to play this role. The prohibition of advocacy activities by foreign and Ethiopian resident CSOs meant that these organisations could not work on ensuring the accountability of the state and other corporate bodies. CSOs reported that ensuring government accountability was not a role that the state believed CSOs should be playing either. As one interviewee indicated, the government did not recognize the contribution of CSOs to sustainable development.¹⁰⁷ According to another interviewee, the ruling party, EPRDF, has a problem in seeing CSOs as development partners.¹⁰⁸ CSOs are characterized by the ruling party, at worst, as rent-seekers or, at best, as gap fillers, incapable of contributing to sustainable development.¹⁰⁹ Both these negative and reductionist perceptions

¹⁰⁶ Hutter and O'Mahony (n 1).

¹⁰⁷ See, for example, interview with CSO, 1 August 2018 (DG02). Interview with CSO, 3 August 2018 (DG05): "Yes, in principle. In practice it is quite another thing".

¹⁰⁸ Interview with practitioner and researcher, 2 November 2018 (DG16). See also interview with CSO, 2 August 2018 (DG04).

¹⁰⁹ Interview with practitioner and researcher, 2 November 2018 (DG16). Interview with researcher, 1 November 2018 (DG13).

of the government towards CSOs significantly hindered their ability to engage and work with government, but also to ensure the state was meeting its own sustainable development agenda.¹¹⁰

CSOs faced particular obstacles to playing different roles in promoting sustainable development, but all reported that the CSA and the excessive bureaucratic demands of the CSP interfered with every aspect of their work. Many of the CSOs we interviewed complained about the slow registration processes,¹¹¹ significant delays in decisions being taken on minor requests (such as the opening of a bank account¹¹² or the purchase of vehicles – an activity that requires government approval¹¹³), interference with project design and implementation and excessive reporting requirements.¹¹⁴ For example, before an organisation can be registered, public notice must be made in the press allowing time for objections and approval is needed from the related Ministry creating lengthy delays.¹¹⁵ The CSA itself recognized the involvement of multiple actors, which can cause undue delay in the registration process.¹¹⁶ These delays impacted the ability of organisations to raise funds but also to meet their obligations under funding agreements. The requirement for Ministry approval also meant the state could interfere in the work of CSOs. One organisation reported that it was denied permission to run a programme on developing emergency response procedures (for dealing with environmental emergencies such as floods and droughts) because the relevant state entity wanted the funds to instead be used to provide immediate relief to drought victims.¹¹⁷

Despite the excessive constraints many CSOs faced under the CSP, many of the CSO employees we interviewed suggested that regulation could promote their interests by ensuring greater transparency and accountability in the sector and building public trust. Greater CSO accountability was an identified aim of the CSP, which requiring CSOs to submit periodic activity and financial report to the CSA and local government entities. CSA employees asserted that the transparency and accountability system introduced by the CSP improved both the effectiveness of CSOs in project administration and their negative

110 Interview with CSO, 2 August 2018 (DG04). Interview with practitioner and researcher, 2 November 2018 (DG16).

111 On change from one type of CSO to other type: see interview with CSO, 2 August 2018 (DG04).

112 Interview with CSO, 3 August 2018 (DG05).

113 Interviews with CSOs, 4 August 2018 (DG08), 9 November 2018 (E5).

114 Interview with CSO (n 47).

115 Interview with regulatory body, 31 October 2018 (DG12).

116 *ibid.*

117 See also interview with CSO, 12 October 2018 (DG09).

public image.¹¹⁸ But while CSOs recognised the importance of state regulation, they saw the CSP as inefficient, ineffective and allowing excessive state control and intrusion over the civil society sector.

In the next section, we assess whether or not the newly adopted law addresses the problems and failings of the CSP and allows CSOs to play their essential roles in realising sustainable development in the country.

6 The New Regulatory Reform on CSOs (2019)¹¹⁹

6.1 *Genesis and Nature of the Reform*

As of the first half of 2018, the Ethiopian Government has been working towards rapid reform in various areas, raising the hopes of many Ethiopians that the country is entering a new period of democratization and accountable governance. The need for the reform was precipitated by a series of popular protests between 2017 and 2018 in many parts of the country, especially in the regions of Oromia and Amhara. Major reforms were initiated after the coming into power of the new Prime Minister, Abiy Ahmed, in April 2018. An important reform, for the purpose of this discussion, came at the beginning of 2019 with the adoption of Ethiopia's new civil society law. While it is still too early to know exactly what the impact of the new law will be on the civil society sector, the new legislation does appear to take significant strides towards the creation of an enabling environment for CSOs and towards better protection of rights to freedom of association and expression.

The new law starts with a change of perspective towards the governance of CSOs in the sense that it envisions a far greater role for self-regulation in the civil society sector by creating a Council of CSOs in which all such organisations are required to assume membership.¹²⁰ Unlike the previous law, the new law instructs the regulatory body, the CSOs Agency, to play a more facilitative and less controlling role.¹²¹ It also narrows down the Agency's discretionary power, for example, to refuse applications for registration on the basis of practice or directive, except for reasons stated in the same legal instrument.¹²² Unlike the CSP, which prohibited access to court to foreign CSOs, the new law

¹¹⁸ Interview with regulatory body, 31 October 2018 (DG12) 6.

¹¹⁹ A version of this section of the paper was previously published as a blogpost on the Include Platform on 11 March 2019, <<https://includeplatform.net/blog/ethiopias-new-civil-society-law/>> accessed 15 May 2020.

¹²⁰ See FDRE Organizations of Civil Societies Proclamation (n 11) art 85.

¹²¹ *ibid* art 62(8).

¹²² *ibid* art 59(2).

allows all CSOs to challenge the decisions of both the Agency and the CSOs Board in relation to the refusal of applications for registration, and other administrative measures related to suspension and dissolution.¹²³ The Agency's power is now reduced to the temporary suspension of an organisation for up to three months, unlike the CSP that mandated the Agency to cancel the license of CSOs.¹²⁴ The need to sign a project agreement with line ministers or local administrators is now removed and it is no longer a requirement for project registration and even after registration. The new law further avoids the requirement for the periodic renewal of the licenses of CSOs although this was the case under the CSP where they had to apply for the renewal of their licenses at the end of every three years of their previous registration.

The new law introduces a greater reliance on the self-governance of CSOs and it has lifted many of the major restriction and prohibitions imposed under the previous CSP. It lifted the restrictions on freedom of association and operation, especially the prohibition on advocacy activities and access to foreign funding. The new law allows CSOs to engage in any lawful activity,¹²⁵ including in advancing sustainable development and other advocacy and governance related activities.¹²⁶ It has also lifted the restrictions on the formation of consortia or networking organisations. In addition, CSOs are now allowed to generate income from any legal sources (be it domestic or foreign source), including by engaging in any lawful business and investment activity subject to the fulfilment of the relevant trade and investment laws.¹²⁷

However, the new law maintains some restrictions and requirements of the CSP, albeit with some modifications. The first relates to the cost regulation, which provides a cost formula for administrative versus programme expenses. The percentage of costs allowed for administrative matters vis-à-vis programme activities of CSOs is reduced from 30 percent in the CSP to 20 percent in the new CSOs law. This 20/80 cost formula is meant to be applicable to an "organisation established for the benefit of the general public or that of third Parties".¹²⁸ If seen at face value, this looks more severe than the previous 30/70

123 *ibid* arts 59(8), 77(5) & 78(5).

124 See CSP (n 48) art 92.

125 FDRE Organizations of Civil Societies Proclamation (n 11) art. 62(1). However, 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, unless permitted to so do with another law: *ibid* art. 62(5).

126 *ibid* art 62(8).

127 *ibid* art 63(1) (b & c).

128 *ibid* art 63(2).

cost formula. However, the new law tries to ease the burden this cost formula might pose on administrative expenses, by narrowly redefining the list of costs covered in administrative matters. The removal of the restriction on access to funding is also hoped to increase the overall financial capacity of CSOs and, in concomitant, their ability to generate more money to cover administrative expenses.

The other remaining restrictions are that the new law requires CSOs to open bank account with the prior approval of the Agency, to keep books of account and to submit annual statements of account, activity and financial, and audit reports to the Agency. It further requires the Agency to disclose any annual activity report or other document to the public, upon request by any concerned body or members of the organisation. Moreover, the law requires all CSOs to ensure access to information to their beneficiaries and members by making “available at all times” the books of account, audit reports and annual reports.¹²⁹ These can be seen as the legacies of the CSP, which are maintained in the new law *mutatis mutandis* in order to ensure some degree of state and other stakeholders’ oversight over the activities of CSOs in order to ensure transparency and accountability in civil society operations.

6.2 *Prospects and Challenges for Sustainable Development CSOs*

The adoption of the new law in 2019, which lifted many of the bureaucratic and operational restrictions on the civil society sector, has been welcomed by CSOs and donors both in and outside the country and has generated optimism about the future prospects of the civil society sector in Ethiopia. In a presentation to civil society representatives, Debeb Hailegebriel, a member of the drafting committee who wrote the new law, stated that he expects the law to have a number of important impacts. These include a steady growth in the number and type of CSOs and a shift of CSOs’ attention to a right-based approach to sustainable development. He anticipates an increased number of CSOs working in marginalized and remote areas and greater high interest from donors to support interventions relevant to sustained political reform such as peace building, dialogue, rule of law. He believes that the new law will lead to an improved relationship between government and CSOs, the development of self-regulatory capacity in the civil society sector, and a broadened area of engagement for CSOs in a wide range of socio-economic and political matters.¹³⁰

129 *ibid* art 74(1 & 2).

130 Debeb Hailegebriel, The 2019 CSO Proclamation: The Drafting Process and Improvements, Presentation at the national workshop on CSOs in Sustainable Development in Ethiopia, organized by our research group on 26 and 27 May 2019, Mekelle, Ethiopia. He has

Despite this strong optimism, however, it is too early for an ex-post analysis of the new legislation less than a year since its adoption so as to know exactly its impacts on the above projections, in general, and the roles of civil society, in particular. What is certain is that challenges will remain.

As stated, the new CSOs law still maintains some degree of State oversight through registration, reporting and funding allocation requirements. The 20/80 cost allocation may prove to be an ongoing challenge for CSOs that focus on advocacy, governance and sustainability discourse. The statement that the overall income of CSOs and, in concomitant with that, the 20 per cent share of that income allowed for administrative tasks, will soar as a result of the removal of the funding restrictions may be a distant ideal. CSOs are expected to grow in number, size and diversity and the resource competition between them may get tougher. This, coupled with less dependable and ever-shifting priority of donors, can render the assumption behind the 20/80 cost formula less tenable.

Another potential challenge is the bureaucratic apparatus. In this regard, an important insight can be drawn from our empirical study on the impact of the CSP. Many of the CSOs we interviewed found the Agency's corrupt and abusive behavior more difficult to bear than the restrictions provided in the CSP itself. This indicates that, unless the quality of governance within the Agency's bureaucratic system is transformed for the better in terms of service quality, professionalism and work etiquette, there may still be rooms for bad governance and abuse of power by the Agency in its dealing with CSOs.

The final challenge that we wish to highlight is broader political context. Doubts remain as to whether the new CSOs law alone is adequate to transform the sector into a meaningful development partner. These doubts arise from dissatisfaction on the breadth and authenticity of the overall political reform taking place in Ethiopia. Apart from the enactments of piecemeal legislations here and there, with an apparently quick-win and window-dressing approach, the government is yet to come with a clear roadmap that can assure a systemic breakthrough in democratic transformation with a strong civil society base. This casts uncertainty on the authenticity and the sustainability of the overall political and legal reform and its future impact on the civil society sector.

extensive experience as a researcher and practitioner in the sector and also took part in the drafting of the new CSOs legislation.

7 Conclusion

CSOs play a significant role in sustainable development in countries like Ethiopia. However, in Ethiopia, contemporary shifts in global interest as well as legal and political changes within the country have significantly shaped CSOs' functions and roles in sustainable development during the last several decades. Their overall fate, specific mandates and degree of involvement in national developmental affairs often hang on the balance of prevailing political and legal spaces which swing between extreme open-door policies to complete closure at different times. In recent years, the road to sustainable development has been bumpy given the extent of mistrust and unfavourable attitudes towards CSOs, which was reflected in state laws and legislation especially in the post-2009 period.

Recent radical reforms in civil society laws are hailed by many as a positive leap forward given the fact that most of the restrictions pertinent to registration, generating and using funds and defining their own scope of operation have been lifted. But challenges remain. The impact of the retained bureaucratic oversight roles of the regulatory Agency and the uncertain broader political context is to be seen. Moreover, CSOs' multi-faceted roles as relief providers, advocates of human rights especially representing vulnerable groups and regulators of the state in Ethiopia can only be effectively exercised if the current challenges emanating from resource constraints, weak internal accountability systems, and poor networking and functional integration among stakeholders can be duly addressed.

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