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A Critical Review Study with Reform Recommendations

The Confederation of Sudanese Civil Society Organizations is a coalition of independent civil society organizations working to safeguard its member organizations and strengthen their capacities in realizing a democratic community with good governance in Sudan through innovative approaches to capacity building, advocacy, networking and building knowledge.
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INTRODUCTION

Civil Society Organizations (CSOs) have an influential and active presence in society and across local, national, regional and international levels, especially in issues related to sustainable development, human rights, the environment, basic freedoms, peace and coexistence, good governance, social justice, culture, relief, humanitarian assistance, women and youth issues and issues of vulnerable groups, disability, children and much more. Hence, it is vital to objectively integrate and harness the role of CSOs and their contributions towards development and social wellbeing. It is also important to reflect their importance when making laws and regulations that would organize and regulate their work in the Sudan and, to objectively consider the role CSOs can play in national development and the energy and expertise they bring.

In Sudan, where resources and capacity within state actors remains inadequate to meet the social, economic and cultural aspirations of its citizens the role and importance of CSOs becomes more important. The pursuit and achievement of such aspirations and development goals not only represents a right of the citizen but is also essential to the process and achievement of peace, human security and stability in the country. Today, as CSOs take on the myriad of development issues some of which are mentioned above, and the challenges facing the country, it is imperative that the state have a national strategy that seeks to harness their technical abilities as well as their respective human and material resources and rich experience, and paves the way for them to become more active partners in the development process.

Recognizing this important and essential role of civil society organizations, the National Comprehensive Strategy for the period 1992 - 2002 dedicated a chapter to defining its strategy for voluntary and charitable work, this was also reaffirmed in the quarter-century (quadranscentennial) Comprehensive National Strategy of 2002-2027 that stressed “civil society leads the state, and not the opposite”.

Attention to the role of CSOs and acknowledgment of their importance in meeting social needs in the Sudan has been reflected in national legislation. Several laws regulating activities of civil society in the country have been issued since independence, these include the 1957 law for the Registration of Associations, the 1988 and 1996 Foreign Organizations Work Regulation Act, and the present Voluntary and Humanitarian Works Act (VHWA) of 2006. These laws all reflected the political dispositions and temperament of the political order towards CSOs during those times. The present day Voluntary and Humanitarian Works Act (VHWA) was passed at the beginning of the transitional period in 2006, following the signing of the Comprehensive Peace Agreement (CPA) in 2005, and within a framework of political arrangements between the two ruling parties at the time, the National Congress and the Sudan People’s Liberation Movement (SPLM). Based on this law, a series of regulations and directives intended to regulate the work of Voluntary and Humanitarian organizations to operate in accordance with the law were issued over the years.

However, the 2006 Voluntary and Humanitarian Works Act has failed to accommodate these wider understanding on the role and contribution of civil society in sustainable development as well as in
other areas, and has confined its understanding of voluntary work mostly to humanitarian work. It also failed to reflect the spirit and vision declared in the quarter-century (quadranscentennial) Comprehensive National Strategy of “elevating the role of civil society – in all its forms of modern and traditional organizations to ensure their full partnership with the state in the planning, implementation of programs, and establishing pillars of support ...”. Hence several CSOs have dedicated efforts to study the law with the aim of contributing their vision for a new law that would organize and govern their work in Sudan. On the other hand, acknowledging the shortcomings of the 2006 Act and indicating a desire to reform it, the Humanitarian Aid Commission (HAC) proposed a new draft law in 2017.

This study comes as a result of efforts being led by the Confederation of Sudanese Civil Society Organizations (CSCSOs), and incorporates the views and suggestions of several other organizations and individuals towards reforming the law governing and organizing voluntary work in the Sudan. Alongside other similar past efforts that have been undertaken, it reconfirms the persistence of Sudanese civil society in constructively engaging with state bodies and presenting proposals and objective alternatives to replace the Voluntary Work Organization Act of 2006 and thereby proactively contributing to legislative reforms that may pave the way towards a more effective role for CSOs in achieving peace, social justice and development in the country.

The study is presented in two chapters, the first presents an overview of national and international legislative frameworks related to the work of NGOs while the second reviews legislative reforms that could be adopted in any new Bill for the organization of voluntary and humanitarian work in the Sudan. The second chapter also provides a critical analysis of the current 2006 Law as well as the new proposed 2017 Bill. The study concludes with several recommendations.
NATIONAL AND INTERNATIONAL LEGISLATIVE FRAMEWORKS FOR CIVIL SOCIETY

This opening section of the study presents an overview of the national as well as some of the international legislative frameworks that are supposed to shape the laws and regulations which impact civil society in the Sudan.

Freedom of Assembly and Association: Sudan National Frameworks

The Interim National Constitution of the Republic of the Sudan of 2005 guarantees the right to freedom of assembly and association. Article 40.1 of the Constitution states –

*The right to peaceful assembly shall be guaranteed; every person shall have the right to freedom of association with others; including the right to form or join political parties, associations and trade or professional unions for the protection of his/her interests.*

Article 40.2 under the same section titled ‘Freedom of Assembly and Association’ also directs the national legislature that –

*“Formation and registration of political parties, associations and trade unions shall be regulated by law as is necessary in a democratic society”.*

The expression “shall be regulated by law as is necessary in a democratic society” beckons the question of what such a democratic society in relation to associational life might look like. From the standpoint of civil society in Sudan, a democratic society is one which recognizes “the limit of the state and market as avenues for making communal decisions and organizing communal actions and acknowledges the link between a robust associational life and the viability and virtues of a democracy”.

Specific reference to charitable and humanitarian institutions is made in Article 6(b) of the Constitution, which reads -

*The state respects the following religious rights:*

*(b) Establishment and maintenance of appropriate charitable and humanitarian institutions.*

This constitutional reference to charitable and humanitarian institutions, came under the section titled ‘Religious Rights’. This seemingly qualifies and elevates the establishment of such institutions to a level of these being religious rights. Consequently, this right should be respected and enjoyed by all entities involved in voluntary and humanitarian work including non-governmental organizations.

Furthermore, under the same section Article 6(f) states that -

*The state respects the following religious rights:*

*(f) solicit and receive voluntary financial and other contributions from individuals, private and public institutions;*
Based on the constitutional articles above, facilitating/supporting the establishment of charitable organizations and their right to solicit funds/contributions, as well to freely associate with others and form associations is a sacred right sanctified by the Sudan interim constitution.

Elsewhere in the constitution reference is made to freedom of association within the Bill of Rights which represents “a covenant among the Sudanese people and between them and their governments at every level and a commitment to respect and promote human rights and fundamental freedoms enshrined in this Constitution...”. Articles 27.3 and 27.4 of the Bill of Rights\(^1\) states -

27.3 All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.

27.4 Legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights”.

This also represents a decisive provision to legislators and instructs them to commit to its requirements in all laws that are enacted, including freedom of association and organization.

Sudan’s National Dialogue Conference held during the week of 9 – 11 October 2016, and which brought to an end a two-year consultation process aimed at discussing and approving the proposed national dialogue document to provide the basis for drafting a permanent constitution, defining the national identity, bringing peace and redefining the government, also made recommendations relating to freedom of association and assembly as well as recognizing the importance of civil society.

The strongest recommendations came from the Committee on Foreign Relations, the Committee on Essential Freedoms and the Committee on Governance and Outcomes of the Dialogue.

The following recommendations emerged from the Committee on Foreign Relations –

Recommendation#9. Compliance with international conventions and regional treaties to which Sudan is party.

Recommendation#24. Stimulating the role of civil society organizations, diplomacy and popular efforts and supporting their programs/activities and their participation in international and regional forums in service of the national goals of the country.

The Committee on Essential Freedoms made the following recommendation that references civil society and more specifically, human-rights oriented organizations -

Recommendation#8. The right of national organizations, associations and networks to work on human rights issues in cooperation with regional and international organizations and in accordance with national regulations.

Recommendations impacting civil society and the rights to association and assembly emanating from the Committee on Governance and Outcomes of the Sudan National Dialogue were -

\(^1\) Chapter two of the Sudan Interim Constitution of 2005
**Recommendation #34. The right for effective community participation**

**Recommendation #57. Stimulating the role of civil society organizations and supporting their role in development and social co-existence in compliance with the laws and national sovereignty.**

In safeguarding and upholding the rights to freedom of association and organization, it is also important to note that a Voluntary and Humanitarian Works law may be influenced by a wide range of other laws and regulations, these should not be found to contradict or undermine these rights. A few such laws that may overlap and impact these rights to varying degrees include the law that regulates Foreign Affairs, International Cooperation, Finance and the Economy, Federal Governance, Civil Defence and the National Intelligence and Security Services (NISS).

**Freedom of Assembly and Association: International Frameworks**

As aforementioned, Articles 27.3 of the bill of rights confirms that all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan are an integral part of the Bill, and which is an integral part of the Sudan constitution. Consequently, all legislation being made that impacts freedom of association and the right to peacefully assembly must also be bound by standards/requirements stipulated in these instruments and covenants.

There are several core human rights instruments with articles that are of direct relevance to civil society’s work.

- Universal Declaration of Human Rights (articles 19, 20, 21);
- International Covenant on Civil and Political Rights provides for the rights to freedom of opinion and expression, peaceful assembly and association, and participation in public life (articles 19, 21, 22, 25);
- International Covenant on Economic, Social and Cultural Rights provides for the right to form or take part in a trade union and to participate in cultural life (articles 8, 15);
- Convention on the Elimination of All Forms of Discrimination against Women provides for the right of women to participate in political, economic and cultural life (article 3);
- International Convention on the Elimination of Racial Discrimination prohibits discrimination in relation to the expression, assembly and association, and in conduct of public affairs (article 5);
- Convention on the Rights of the Child provides for freedom of expression, association and peaceful assembly (articles 13, 15);
- Convention on the Rights of Persons with Disabilities guarantees the rights to freedom of opinion and expression, and access to information, participation in political and public life, as well as in cultural life (articles 21, 29, 30);
- International Convention for the Protection of all Persons against Enforced Disappearance provides for the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and
the fate of disappeared persons, and to assist victims of enforced disappearance (article 24); and

- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families provides for the right to association (article 26).

Sudan is party/signatory to several of these instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the International Convention against all forms of Racial Discrimination (ICERD). It has also ratified the African Charter on Human and Peoples’ Rights and recently the Convention on the Rights of Persons with Disabilities, along with the Optional Protocol, allowing for individual complaints.

The Right to the formation of Voluntary Organizations is listed under Article 20 of the Universal Declaration of Human Rights states -

“Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association”.

Article 21, and 22 of International Covenant on Civil and Political Rights stipulates -

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

22. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 22 (above) of the International Covenant on Civil and Political Affairs would be meaningless if individuals were not able to form NGOs and gain recognition as legal entities. The Secretary General and Special Representative on Human Rights Defenders maintained that –

“CSOs have the right to be registered as legal characters and must gain all advantages related to such characters”.

The UN Rapporteur on Human Rights stated

“If there is a need for imposing registration procedures such procedures must be hastened... complete justifications must be presented for rejection of registration for political considerations... legislations on CSOs must provide for enough information on registration procedures”.

Article 8 of the International Covenant on Social, Economic and Cultural Rights also maintains the same direction.

The Human Rights Council in its Resolution 15/21 that –
“everyone has the rights to freedom of peaceful assembly and of association and that no one may be compelled to belong to an association”.

The same resolution also stressed -

“the importance of the rights to freedom of peaceful assembly and of association to the full enjoyment of civil and political rights, and economic, social and cultural rights”.

The resolution goes on to state –

“Recognizing also that the rights to freedom of peaceful assembly and of association are essential components of democracy, providing individuals with invaluable opportunities”.

On the issue of registration and to fulfil the purpose or objective behind their association more effectively, individuals may endeavour to acquire a legal character in the form of a legally recognized entity or organization. Becoming a legal entity enables CSOs in a lot of countries to be more operational, and exercise much more power than as an individual or informal group of individuals. As a legally recognized entity, organizations can transact contracts and deals for services and/or commodities, employ staff, and open bank accounts. It is internationally recognized that the state has a duty to facilitate and enable non-governmental groups and organizations to become legally recognized entities.

Article 11 of the African Charter on Human and Peoples' Rights reads-

“Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”
CURRENT LEGISLATION AND REFORM RECOMMENDATIONS

A review of previous legislation governing the voluntary work sector in Sudan (The National Associations Registration Act of 1957, the Act for Regulating the Work of Foreign Organizations of 1988, and the 1996 law) reveals varying but generally increasing degrees of restrictions on the activity of CSOs over time. The Voluntary and Humanitarian Works Act for 2006 was unprecedented in terms of restrictions on civil society and failed to present provisions that would enhance the growth and development of Sudanese CSOs. It was passed during the transitional period (2006 – 2010) following signature of the CPA in 2005. Its promulgation occurred against a backdrop where legal reforms to several laws were being negotiated based on compromises for political aims/gains being made by the two ruling parties, the National Congress Party (NCP) and Sudan People’s Liberation Movement (SPLM). A report on Norwegian support to democracy through the UN referred to these compromises in legal reforms made during the CPA period stating -

*When these bills were finally passed after a great deal of bargaining between the two ruling parties, conscious about the HR requirements, the most crucial of them (such as the Security Bill, the Press and Publications Act and the Humanitarian Act) still ended up with articles and clauses which are in blatant contradiction of the Interim Constitution, general human rights standards and a number of international treaties.*

*It is obvious that compromises in the law-making had to be made to meet the CPA timeframes ahead of the elections and the referenda. The problem is that all the non-constitutional compromises in the end will cause a relapse and degeneration of the democratic reforms that were heralded by the CPA.*

Despite fierce resistance and campaigning by civil society at the time, the bill was passed into law, and through practice has now come to be recognized as an impediment to the progress and development of civil society in Sudan.

Despite the law being generally unfavourable and non-conducive to the development and contributions of civil society, the relevant authority (HAC) may have introduced regulations and directives that would have addressed some of the concerns of civil society and curtailed the control of the state on them. However, most of the regulations and directives that were formulated were in general more controlling and restrictive and gave the General Registrar of voluntary organizations and the Minister discrentional powers.

*The Voluntary and Humanitarian Works Act for 2006 was unprecedented in terms of restrictions on civil society and failed to present provisions that would enhance the growth and development of Sudanese CSOs.*

This section presents a review and analysis of key provisions in the current NGO law as well as the draft 2017 proposed revisions that have a direct and huge impact on the future development and effectiveness of the NGO sector in Sudan. Each sub-section begins with a comparative presentation...
and review/analysis of the two laws and the changes that are being proposed, and concludes with some specific reform recommendations.

The regulatory authority
Practise in Sudan over the last few years and following the enactment of the law in 2006 has shown that the issue of the institutional body that should be vested with the authority to regulate and oversee the affairs of civil society in Sudan, represents an important starting point in any meaningful legal reforms that would position the Sudanese civil society sector favourably in terms of its development and ability to make sustainable and meaningful contributions to the pressing challenges and issues facing the Sudan.

The 2006 law vests the authority over registration and regulation of a large group of CSOs working to resolve problems and address issues that are important to society, with the Humanitarian Aid Commission (HAC). Under the law, HAC is formed and headed by a Commissioner who is appointed by the President (upon recommendation of the Minister of Humanitarian Affairs). Together with the Registrar General (appointed by the Minister), the two are given a wide range of discretionary powers to the General Registrar and the Minister. The new draft proposed bill for 2017 is no different and continues along the same model of establishing HAC as the body/authority responsible for executing the law with discretionary powers being given to the Commissioner (appointed by the President upon the recommendation of the Minister) and the General Registrar who is appointed by the Minister.

Vesting such authority with an entity that is established solely by the executive branch of government not only puts at risk the principle of independence of NGOs but also leaves room for government or the state to exercise an unhealthy level of control over the Sudanese people to exercise their right to freedom of association.

Pursuing other plausible alternatives warrants a reflection on the implications of appointing such a body/entity (with oversight and regulatory authority) on the principle of independence of NGOs and the important fact that they are in essence ‘non-governmental’. A principle which is generally recognized but also deducible from the definitions/interpretations given in the 2006 law, despite the confusion caused by that the different terms used in defining the non-governmental organizations (charitable organization, civil society organization, foreign voluntary organization, national voluntary organization).

Consequently, it is plausible that at times government objectives and priorities (that most often are underscored by political motivations/ends) may contradict with those of CSOs (which are apolitical). It is also evident from practice in the Sudanese context that oftentimes civil society organizations find themselves in direct confrontation with government. At such times, government acting indirectly through regulations and directives (as well as other less visible tactics) will attempt to restrict the formation and freedom of these NGOs.

2 The Ministry of Humanitarian Affairs along with the Ministerial position of the ministry were subsequently dissolved.
3 These terms and their meanings is given under the heading ‘Interpretations’ of the 2006 law.
Another important factor that warrants consideration is that in some cases some CSOs play a watchdog role on the different branches of government, be they the executive, the legislature or the judiciary. This is especially true in the case of organizations monitoring and reporting on human rights issues in the country – and who have come under increasing obstruction and harassment in recent years. This should also be factored into any effort at identifying the most suitable body/authority that may oversee and regulate them, such that the principle of their independence is safeguarded to the furthest extent possible.

Thus, it can be argued that the agency/body mandated to organize and regulate this sector should NOT be solely affiliated with or established by the executive branch of government. Being regulated and overseen by an entity directly affiliated with and under the executive branch of government inadvertently undermines the principle of independence of civil society (non-governmental) organizations. Maintaining this principle of independence of CSOs necessitates that need for the regulating and oversight authority be entrusted to an independent authority/commission such as is the case of the National Elections Commission (NEC) or the Fiscal and Financial Allocation and Monitoring Commission. This despite the fact that within the prevailing political context of the Sudan, the independence of any commission is questionable.

Reform recommendations for the regulatory authority
Vesting the registration, oversight and regulatory authority over CSOs with the Executive greatly diminishes and undermines the principle of independence, especially in cases where the interests/positions and priorities of the two may be in contradiction with each other. The HAC has frequently and increasingly come under criticism for exercising their powers of registration, and revocation of registration based on security and political considerations. Recently this trend has increased and has led civil society activists and leaders to dismiss this setup (being regulated and overseen by the executive) as conducive to the independence and advancement of civil society in the country.

By comparison, the legislature and judiciary represent better candidates with whom such authority might be vested, each to varying degrees. The legislative branch of government and CSOs converge on the matter of oversight on the performance of the executive branch, and ensuring the fulfilment of the rights which it is entrusted to uphold. The legislature is also similar to civil society in its representational nature, each being accountable to the public as their constituency. Often CSOs actively engage membership of parliament with the aim of creating a lobby within parliament to change policies or amend legislations. On the other hand, parliament also has its political dimensions with political parties (both opposition and government aligned) being involved through their elected representatives. And within the Sudanese context,

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*Maintaining this principle of independence of CSOs necessitates that need for the regulating and oversight authority be entrusted to an independent authority/commission such as is the case of the National Elections Commission (NEC) or the Fiscal and Financial Allocation and Monitoring Commission.*
where the Parliament has been for the large part of the last 25 years dominated by the ruling party – it becomes unlikely that the parliament will have a role that is independent from the ruling party or the executive branch. This misgiving is not only confined to authoritarian or totalitarian governments but it also reflects the practice of democracy in many developing nations. Hence, it is rather inappropriate to give legislative power, alone, power to appoint the authority that oversee the activities of CSOs.

When examining the plausibility of the judiciary, it is apparent that the two have separate roles and functions without much overlap and/or conflict over roles between them. The judiciary (at least in theory) enjoys independence from both the executive and legislative branches of government. This greatly diminishes the likelihood of it being a threat or undermining the principle of independence of CSOs if authority to oversee and register CSOs is vested with it or with an authority under its umbrella.

That said, an ideal model would be for there to be an authority/entity that would be responsible for enacting the law, that is established through the agreement/involvement of both the parliament and the executive branches of government. Such an entity would also have its own budget separate from that of the government. Representation of both the parliament and the executive branches of government in such an entity (with whom authority to register and oversee regulation of CSOs is vested) recognizes the role of the executive branch in certain aspects related to the work of civil society whilst at the same time minimizing the likelihood of abuse of authority by the executive branch (or government in power) and safeguarding the principle of independence of CSOs.

Potential nominees for the position of the Commissioner (to head the new independent authority or a future HAC) should be made through a process that involves both the parliament as well as civil society and must be based on criteria such as independence from government (or political activism), and the extent of their affiliation and involvement with civil society. A list of at least three nominees should then be presented to the Presidency to select the final candidate who will be appointed as Commissioner for Humanitarian and Voluntary Work.

Purpose/objectives of Humanitarian Work
Article 6 of the current Voluntary and Humanitarian Work Organization Act for 2006 refers to the “objectives of humanitarian work” and list these under eight (8) points that can be seen to be dominated by a backdrop characterized by war, armed conflict and natural disasters. Throughout all the eight points, Article 6 can be seen to revolve around the issue of “….relief to citizens suffering from natural and unnatural disasters...” be that directly or indirectly and in different ways and an interplay of words. Worth noting is that in its opening, the Article makes passing reference to services “including services of human rights protection of the environment” but fails to elaborate beyond that in any of the eight (8) points that follow.

The provision of the Article reads as follows –

*The main humanitarian objectives of the organizations, registered under the provisions of this act shall include, but not be restricted to rendering the following services (including services of human rights protection of the environment)* -
(a) **Emergent relief to citizens suffering from natural and unnatural disasters, by concentrating on the most affected group**

(b) **Parrying, Reducing and managed the disasters risks**;

(c) **Tying aid relief with resettlement, reconstruction and development**

(d) **Care for the internally displaced people, refugees and returnees, through preparing and implementing the programs of relief, reconstruction and resettlement, in accordance with bodies concerned**;

(e) **Reconstruction of economic and social infrastructure, which are destroyed by war, or natural disaster, in co-ordination with national institutions, established for such purpose**:

(f) **Specifying priorities for relief, resettlement, rehousing and reconstruction, in consultation and coordination with beneficiaries and government authorities having connection**;

(g) **Building of local capacities, to enable national organizations to depend upon their capabilities**;

(h) **Implementing relief and humanitarian services projects, through non-governmental and charitable organizations, and voluntary organizations, or civil society organizations, whose objectives are harmonies with public policies and beneficiaries’ interests**.

In reviewing these objectives, it is evident that the legislator is concerned with more or less the same issues, however going about it using different phrases and with an interplay of words. This not only creates ambiguity but also reflects a lack of understanding and ignorance on the part of the person drafting the legislation on the ultimate purpose/objectives that it is supposed to serve. In so doing and adopting a narrow focus on activities related to an environment context characterized by armed conflict and natural disasters, the law and this specific article have failed to include a great deal of other activities and areas where CSOs in Sudan play a prominent role. Such areas include women in development, education, strengthening democracy and rule of law, peaceful coexistence, social welfare, health, child and women’s reproductive health, and many more other areas/domains.

The new proposed bill for 2017 has adopted the same objectives but with some slight change in language as well as additions. To avoid the repetitions in the 2006 law, two of the objectives were merged into one and worded slightly differently. Furthermore, four (4) new objectives were appended to the list. These were:

- **Reducing poverty and its consequences among affected communities.**
- **Promoting human rights, good governance and the rule of law.**

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4 These are an unofficial translation from the original Arabic text that is in the draft 2017 law. An official English translation had not been made at the time of writing this paper.
• **Building national capacity with the aim of promoting the nationalization of voluntary work and humanitarian affairs.**

• **Promoting environmental sustainability and the protection and conservation of the environment.**

• **Promoting the principles of volunteering and mustering national and international voluntary capacity towards economic, cultural, and social development.**

In adding these new interpretations, the understanding of what voluntary and civil society work encompasses in the proposed 2017 law has slightly been broadened to include areas such as the environment, capacity building, poverty reduction, as well as the controversial area of human rights, good governance and the rule of law. And although this expansion to the understanding of what voluntary work encompasses is to be applauded, nonetheless it still falls short of covering the spectrum of development issues in which Sudanese civil society organizations (currently registered under the 2006 Law) are involved. Issues such as gender equality, health and well-being, education, disability, sports and recreation, culture and the arts, and much more.

Additionally, a prominent issue missed by both the 2006 law as well as the proposed revised law for 2017, is reference to religious rights and freedoms enshrined in Article 6 of the constitution. Moreover, both laws have also missed making reference to global efforts such as the Millennium Development Goals (in the case of the 2006 law) and the Sustainable Development Goals (SDGs) in the case of the 2017 draft law. Moreover, the interpretation of charitable organization, civil society organization, foreign voluntary organization and national voluntary organization contained in Article 4 are both confusing and inaccurate. Finally, the Article reflects a lack of a unified concept/understanding of humanitarian work and confines the work of civil society to a very limited domain.

**Reform recommendations for the stated purpose/objectives of Humanitarian Work**

In reviewing the objectives of humanitarian work, Article 6 of the proposed 2017 law confines the objectives to a list of 8 objectives, which in fact represent areas and activities of humanitarian work more so than they represent objectives of voluntary and humanitarian work. Rather than trying to capture the myriad and vast areas in which Sudanese civil society is currently contributing and working, it would be prudent to adopt a more open and general approach that may accommodate any developments in the future work of civil society organizations. An approach which would accommodate the probable expansion in the activities of civil society organizations and reduce the likelihood that the law would need to be amended time and again.

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5 Article 6 - 6 The State shall respect the religious rights to:–
(a) worship or assemble in connection with any religion or belief and to establish and maintain places for these purposes;
(b) establish and maintain appropriate charitable or humanitarian institutions,
Funding

Funding and the ability to access financial resources, whether domestic or international represents a major issue for national organizations in Sudan. Domestic\(^6\) sources of funding for national organizations are scant, and the state dedicates/allocates very little funds that NGOs can tap into, and which are most often are provided in a preferential way that favours government aligned NGOs also known as GONGOs (Governmental Non-governmental Organizations). International funding (both locally as well as non-locally) represent the only and most significant source of funding that the majority of organizations (and more specifically independent NGOs) can tap into to run their programs and deliver their services.

Article 7 of the Voluntary and Humanitarian Work Organization Act, 2006 which came as a serious blow to national organizations reads -

1. Grants and rally of funding for organizations program shall be through a project instrument to be approved by the commission, as the regulations may elaborate.

2. No civil society organization, registered in accordance with the provisions in this act shall receive funds, or grants from abroad, from an alien person internally or from any other body, save upon approval of the ministry thereof.

With regards to the new proposed 2017 bill the same restrictions and controls apply (with slight changes in the wording), differences being that the authority of the Minister is being replaced with that of the Commissioner on the issue of funding approval. Also added is a third clause that restricts the sale, disposal, donation or mortgage of an organization’s assets without the prior approval of the Commissioner. As such, in the new 2017 proposed bill Article 34 states:

34.1. Grants and the solicitation of funds for the programmes of any voluntary/humanitarian organization, network or union registered in accordance with the provisions in this act shall be through a project instrument to be approved by the Commission, as the regulations may elaborate.

34.2. No national civil society organization, union or network registered in accordance with the provisions of this act shall receive funds, or grants from abroad, from an alien person internally or from any other body, save upon approval of the Commissioner, and as the regulations may elaborate;

34.2 It is prohibited for any organization, union, network, whether foreign or national registered in accordance with the provisions of this act to dispose of its assets (fixed or current), whether through donation, sale, exchange or mortgage or in any other way without the approval of the Commissioner, and as the regulations may elaborate.

\(^6\)Domestic meaning funding opportunities from national Sudanese entities and does not encompass funds/funding opportunities that are available locally in Sudan through international bodies (EU, UN, Embassies, etc.) or foreign organizations working in Sudan.
When the 2006 law was passed, civil society activists and leaders objected strongly to Article 7 relating to funding, arguing that it represents a major obstacle to their work and gives the HAC unprecedented control over access to their funding and resources. The Minister\textsuperscript{7} at the time met with the concerned civil society leaders and activists and had assured them that this Article would not be enforced. Indeed, for almost all the transitional period (2006 – 2011), the provisions of Article 7 were not enforced and funding flows for projects and programmes of national organizations was unconstrained. It was only after the transitional period and in early 2012 that the HAC began enforcing Article 7. An instrument or document called the ‘Technical Agreement’, was introduced as part of the regulations in early 2013 and national (as well as international) organizations were required to complete and submit their ‘Technical Agreement’ before implementing any projects.

The first item of the general guidelines of the Directives for Humanitarian Work published in February 2013 by HAC states that –

\begin{quote}
Funding and implementation of projects of voluntary and humanitarian work for national and international non-governmental organizations should be through ‘Technical Agreements’ approved by the Commissioner General.
\end{quote}

The format for ‘Technical Agreements’ has undergone a few revisions since being introduced in 2013. The current updated version is problematic in terms of process as well as substance.

A first issue related to process is that the ‘Technical Agreements’ are conflictual with the project development and fund-raising process/mechanism. Proposals for funding are developed and made to donors based on certain guidelines and specific requirements/scope that are determined by the donor or funder. When approved, a project is unlikely to be opened for renegotiation and/or any substantial changes in terms of its purpose, outcomes, activities and budgets. Having secured funding, the organization enters a contractual agreement with the donor/funding entity.

Per the HAC regulations, the project once approved for funding by the donor would need to be presented to the HAC for approval, and in the prescribed format/template as per their regulations. Thereupon lies the problem. Should the HAC deem the project to be unacceptable, then the organization would have to retract on its contractual obligation to the donor and return any funding it may have received. This not only represents a waste of an investment of the organizations (as well as the donors) time, but also has the negative effect of discouraging donors from allocating funds to Sudan in future and prioritizing other developing countries which may be just as needy.

\textsuperscript{7} Ahmed Haroun served as the Minister of State for Humanitarian Affairs during the period 2006 to 2009.
A second issue in terms of process, lies in the steps that are to be followed and the different bodies involved in the approval process of the ‘Technical Agreement’. The applicant or implementing organization is required to complete the document (Technical Agreement) and then to first seek the approval of the relevant technical body (or ministry) in the state where the project is to be implemented. Following that, a second approval is required from the HAC at the state level, and finally a third and final approval from the HAC at the federal/national level. The process is not constrained by time\(^8\) and can take anywhere from 2 weeks to 1 or 2 years.

The need for the applicant to deal with each of these three governmental entities (relevant governmental technical body, HAC at state level, and HAC at federal level) also presents another layer of difficulties. This is especially true within the context of Sudan and a fledgling federal system that is fraught with challenges and numerous political accommodation arrangements that have hitherto undermined the coherence and effectiveness of state/government institutions. CSOs have reported cases where a technical agreement having passed through approval stages at the state level and submitted for a final approval at the federal level is returned again to the state for revisions or even rejected because the federal level HAC may have decided that the project was not found to be aligned with the ‘state priorities’. This despite the state authorities having approved it.

In terms of substance – several of the general provisions of the ‘Technical Agreement’ are problematic. Item 7.7 of the general provisions limits administrative expenses for any project to a maximum of 20%. Administrative expenses being described as (Rent, services, stationary supplies, fuel, monitoring and supervision, etc.). Administrative expenses are based on several variables and may vary between projects and from one organization to another. Issues of efficiency (as may be reflected by the organizations administrative expenses) cannot be dictated and prescribed in a ‘one size fits all’ approach such as that stipulated in Item 7.7 of the ‘Technical Agreement’.

Item 7.6 limits the term of a Technical Agreement to one year, and item 7.11 requires projects that cover more than one state in the country to have separate technical agreements for each of the states that they will be delivered in. So multiple technical agreements based on the number of states where project activities will be implemented and for a multi-year project, new technical agreements for every year.

Item 7.9 of these general provisions requires the project to be aligned with “the national priorities that are determined by the Ministries, other relevant bodies, and protocols including promoting the strengthening of national capacity”. The applicant/organization is left to align their project with several priorities which at times are either conflictual with each other and/or all together non-existent, in which case the matter is left to a department in the HAC to assess the projects compliance with this item/article and either reject or approve it.

Item 7.3 requires that the applicant/organization must have secured funding for the project prior to completing the Technical Agreement. Whilst Item 7.5 stipulates that in the case of foreign funding

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\(^8\) Technical agreements have been known to get lost after three months of being submitted at any of these three stages of approval, but more so at the approval stages of HAC at the state or federal levels.
the applicant/organization must have received the approval of the Ministry, as per Article 7.2 of the Voluntary and Humanitarian Work Organization Act, 2006.

Non-compliance with the Technical Agreements and need for the Ministry’s approval for the receipt/acceptance of foreign funds have been used to cancel the registration and licenses of organizations or to put them under sanctions and withhold their license renewal.

Further to the above complications regarding funding and technical agreements, the draft 2017 law complicates things further and endeavours to also subject international organizations such as the UN, and possibly bi-lateral donors such as USAID, or DFID (those who have an agreement with or fall under the Ministry of Foreign Affairs) to the technical agreements requirement. In the opening section titled ‘definition of terms’, the draft 2017 law differentiates between a foreign and an international organization and defines an International Organizations as -

A non-Sudanese organization of an international, regional or governmental nature involved in the field of voluntary and humanitarian work and that has signed a headquarters agreement with the Ministry of Foreign Affairs and a technical agreement with the HAC, and this includes among others UN agencies working in humanitarian issues.

In so doing, the draft 2017 law, will now be calling for technical agreements at two levels – once at the higher level of the International organizations that are doing programming that falls under HAC’s mandate and then again at the level of the national/foreign organizations that are implementing projects that might be funded by that program.

Analysis/Reform recommendations on Funding

Reference to the establishment of charitable and humanitarian institutions' and mobilization as well as the receipt of contributions is mentioned under Articles 6 of the interim constitution of Sudan under a section titled ‘Religious rights’, which elevates these rights to a religious level. Articles 6b and 6f of the constitution reads –

The State shall respect the religious rights to establish and maintain appropriate charitable or humanitarian institutions,
Solicit and receive voluntary financial and other contributions from individuals, private and public institutions;

Having not made any reference to any ‘further regulation by law’ as pertains to this right, Article 7 of the Voluntary and Humanitarian Work Organization Act, 2006 represents a violation of the Constitution.

The Sudan National Dialogue - although no explicit and direct reference was made to funding and taxation in relation to the activities of national CSOs in the Sudan National Dialogue, nonetheless, the outcomes of the community dialogue in a section titled ‘Freedom of political affiliation and the establishment of the associations’, recommend restricting access to external funding to only political parties in all of the six articles related to the formation of unions, associations, and political party affiliations mentioned in that section.

In relation to the issue of funding, the report of the High Commissioner for Human Rights on Civil Society presents practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned notes –

As noted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the right to freedom of association includes the ability to seek, receive and use resources – human, material and financial – from domestic, foreign and international sources (see A/HRC/23/39, para. 8).

Item 72 of the same report reads –

Where no restrictions on the receipt of foreign funds apply to State institutions or businesses, the same should apply to civil society organizations. The law may provide requirements for the audit of accounts, carried out by an independent body.

More specifically in relation to Human Rights defenders, Article 13 of the UN Declaration on Human Right Defenders reads -

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.
Article 7 of the current law as well as Articles 34 of the proposed law are not only contrary to the national constitution and international standards but the provisions also fail to provide a clear legal basis on which the Commissioner/Minister at the HAC may obstruct an organization from receiving foreign funding for its projects/programmes. The ‘Technical Agreements’ introduced by the HAC in early 2013 are equally as contradictory to the constitution and the international standards, and their enforcement represents a serious impediment to the efficiency/effectiveness of organizations as well as their independence and ability to act as innovators in terms of some of the pressing social and development challenges facing communities.

Receiving donations or funding should not be constrained by the law or any other form of restriction, as long as the legality of the funds is not in question. However, recognizing the need for transparency in matters pertaining to funding, a simple system of notification – not one of prior authorisation may be put in place by the HAC (or any other future independent authority as suggested elsewhere in this study). The procedure should be clear and straightforward, with an implicit approval mechanism. Any decision-making powers in relation to restricting external funding for organizations should be left to the courts and not the HAC.

Consequently, Articles 7.1 and 7.2 relating to funding may be revised to read as follows -

**Article 7.1.** Civil society organizations registered in accordance with the provisions of this act may receive funds – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, multilateral agencies, and private sector subject only to the laws generally applicable to customs, foreign exchange and money laundering.

**Article 7.2.** Any entity receiving funds from foreign entities that are not registered in Sudan must notify the HAC commissioner of such and disclose in writing the purpose, amount and entity that is donating the funds.

Alongside this, it would be appropriate that the proposed amendments to the funding of civil society organizations also accommodate the following general principles:

Firstly, CSOs should enjoy support and funding from the general budget of the state, especially to activities that lie within the development strategy of the state;
Secondly, with regard to receiving funds from non-Sudanese sources or from national charitable entities, voluntary organizations should have the same right enjoyed by other bodies, registered under other laws, and that enjoy the right to receive support, donation or assistance without any restrictions. Transfer of such donations through the national banking system should be allowed in accordance with standing regulations and without any restrictions provided such funds are not connected to any sort of criminal work;

Thirdly, rules and regulations must be laid down to ensure transparency and accountability in all that relates to funding of voluntary organizations and to ensure disclosure of reports and other information pertinent to such funds. It is also important to adopt disciplinary rules that reflect adherence to the principles transparency and accountability in addition to other professional areas related to sound management of voluntary work.

Registration and licensing

registration and licensing

Articles 8 through 14 of the Voluntary and Humanitarian Work (Organization) Act, 2006 include provisions for registration, renewal of registration, exemption from registration, rejection of registration and award of registration certificate under the authority and exercise of the Registrar. These Articles are both excessive and unsurpassed in the discretionary powers they provide to the Registrar and in practice have been used to also obstruct the work of organizations and/or to direct and control their activities and programmes to areas and fields which the authorities/government dictates. Furthermore, contrary and counterproductive to the very essence and spirit of voluntary and humanitarian work, Articles 23 and 24 of the Act consider performance of any voluntary work without registration a punishable offense.

Article 23. There shall be deemed to have committed a contravention, every person, or group of persons, who practice the activity of voluntary organization, without registration in accordance with the provisions of this act.

Article 24. Whoever contravenes the provisions of section 23 shall, upon conviction, be punished with fine, together with the funds obtained by the organization may be confiscated.

The proposed draft bill of 2017 goes even further with regards to the requirements and discretionary powers of the Registrar than the current bill. As part of the requirements for registration, the number of founding members is to be increased from 30 (in the 2006 law\(^9\)) to 60 (in the draft proposed bill of 2017\(^{10}\)).

Two new requirements have also been added in the new proposed bill for 2017. Article 16(b) requires that any organization seeking to register must first have been registered at the state level and been working for at least 2 years. Article 16(c) goes further to complicate matters and requires the

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\(^9\) Article 9(b) of the Voluntary and Humanitarian Work (Organization) Act, 2006
\(^{10}\) Article 16(a) of the proposed 2017 Act
applicant to provide evidence of the organizations financial and technical abilities in pursuing their voluntary and humanitarian activities at a federal/national level.

Not only are these provisions vague and subject to different interpretations (e.g. financial and technical abilities), but as practise has shown they tend to provide room for the state to develop even more complicated interpretations, and are in stark conflict with the constitution and international principles.

And whilst there is recognition that from a governance perspective a formal/legal entity should desirably have more than one person, the requirement that this number be thirty members is not only disabling but also thoughtless in that it suggests that if 3 or 7 or for that matter any number of people less than thirty want to associate and establish themselves as a legal personality they cannot do so without the approval of the Minister. More importantly, it represents a clear restriction on the right of freedom of association.

Reform recommendation for registration and licensing

The establishment and registration of an organization should not be constrained by a certain number of individuals seeking to associate together formally. The mere fact that it is an association of members implies more than one person and consequently no reference to the number of individuals or members needs to be made in the law.

Moreover, should they NOT see any benefits to be derived from establishing themselves as a permanent legal entity NGOs or associations should be free to operate informally and without seeking legal personality.

Article 23 and 24 should be changed to read –

Article 23. Any person, or group of persons, wishing to associate together informally for a specific purpose or end, and without seeking to acquire a legal personality, may do so freely for as long as the purpose of their association does not contravene any of the laws of the land.

Article 24. Persons or groups of persons wishing to associate themselves formally and acquire access to any benefits of being recognized as a legal personality may do so in accordance with the provisions of this law.

With regard to the minimum number of persons required to establish themselves as a legal personality/entity, as aforementioned there should be no minimum requirement for the number of persons wishing to associate together formally under a legal entity. Accordingly, Article 9.1 (a) may be revised as follows –

The establishment and registration of an organization should not be constrained by a certain number of individuals seeking to associate together formally. The mere fact that it is an association of members implies more than one person and consequently no reference to the number of individuals or members needs to be made in the law.
Article 9.1. for the purposes of registration of national organizations, the following conditions shall be satisfied, namely that:

(a) The organization shall present, to the registrar, an application including a list of names and addresses of the founding members of the organization;

(b) a copy of the organization constitution;

(c) the names of the principal officers of the organization – President, Treasurer and Secretary

(d) The organization shall pay the fees prescribed for registration;

Likewise, Article 9.2 which provides the Minister (or in the case of the proposed revisions of 2017, the Registrar) authority to approve registration with less than the stated requirement of 30 members, should be modified such that it removes the inherent discretionary powers given to the Minister, and also ensures that establishment of an association or organization is automatic upon notification thereof to the competent authority. A revised Article 9.2 would read –

Recommended revision to Article 9.2- Any organization shall be considered established upon submission of a notification thereof to the competent administrative body, and in accordance with the prescribed format and required documents as set forth in the law, and shall upon such notification be deemed a legal entity.

Additional articles that would follow and supplement the recommended and revised article 9.2 would read -

Article 9.3. Unless any of the purposes or activities stated in the documents of the organization is found to contravene any of the laws of the land, a certificate of registration shall be issued by the Registrar within a period not to exceed thirty (30) days.

Article 9.4. Any organization that is issued with a registration certificate will have its article of association, its listing of founding members and principle place of business published on a public registry that is maintained by the Registrar.

License/registration renewal

Both the 2006 law and the proposed 2017 act, make the same provisions for license renewal on an annual basis\(^\text{1}\), and subject the renewal to regulations and procedures to be developed by the Registrar. Article 11 of the current act reads –

There shall annually be renewed the licence of every organization as to such conditions, as the regulations may specify.

Current regulations in place for renewal involve the following steps –

\(^1\) Article a8 of the proposed act for 2017, and Article 11 of the current law of 2006.
Confederation of Sudanese Civil Society Organizations

• First the organization or association must write the Registrar and request permission to convene the annual general assembly of the organization/association on a said time/date. The request should be accompanied with a number of documents that include the following:
  - The organization’s annual report of activities for the year
  - Audited financial statements for the organization
  - A copy of the expired registration license/certificate
  - A list of the member’s rooster
  - A list of the serving board of directors (also referred to as the Executive Committee)

• Upon acceptance of the request, the Registrar would authorize the organization to convene their annual meeting on a specific date and time and have their representative attend the meeting to ensure it was convened legally and in accordance with the organizations own regulations and constitution.

• Upon successful conclusion of the organizations general assembly and payment of the renewal fees, the Registrar would then issue a renewed license/certificate of registration granting permission to the organization to work for a period of one year. This last step takes anywhere from 15 to 30 days.

The process/regulations pose a number of problems. Firstly, it bestows upon the Registrar a supervisory/oversight role on the internal affairs of the organization that extend beyond their mandate, and is almost paternalistic in nature. Secondly, practice has shown that a request to authorize an organization to convene its general assembly may go unanswered by the Registrar, leaving the organisation in a state of limbo, and rendering any of its ongoing activities as legally non-compliant as it continues to work without a valid license. A valid license is also oftentimes required by donors/funders, and without a valid license several donors (especially in-country donors or funders) would not fund programs/projects of the organization.

Reform recommendation for license/registration renewals
License renewal should be based solely on the annual submission/filing of specific documents to the Registrar. These should be limited to documentation relevant to the serving/active board of directors (or executive committee), an updated list of the members of the organization, an annual narrative report, and audited financial statements for the organization for the fiscal year.

Article 11 should be modified as follows –

Article 11. Registered organizations shall have their license/registration renewed at the end of every year, and upon submission of the required documents stated herein –

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12 A successful conclusion necessitates that the reports/documents be approved by a quorum of the organizations members, and a positive report by the Registrar’s representative confirming the meeting took place and was held in accordance with the organizations articles of association (or constitution).

13 Issue No.2 of the Sudan Civil Society Watch reported that during the second quarter of 2015 reported “that since the beginning of 2015 more than 40 registered organizations have been unable to renew their registration/license to work and that their activities were under investigation/review by the HAC.”

a. Articles of association (if modified or changed)
b. Audited financial statements
c. Narrative report
d. Updated List of members
e. Updated list of serving board of directors

Subsequently an additional article should be added, whereupon receipt of the documents and acceptance thereof the Registrar should be instructed to issue the renewed license/registration within a certain limit of time. The proposed article would read –

License renewal should be based solely on the annual submission/filing of specific documents to the Registrar.

Unless the applicant fails to submit any of the required documents or the organization’s purpose or activities are found to be in violation of Article 13.1, a renewed certificate of registration shall be issued by the Registrar within a period not to exceed fifteen (15) days.

Rejection of registration
The provisions for the Registrar to reject registration in the current law state that –

Article 13.1 The registrar may refuse the registration of an organization if

a. The activities of the organization are incompatible with the principles governing humanitarian work provided for in section 5.
b. The application contains false information
c. The organization fails to satisfy the conditions laid down in section 9.1 and 9.3 of this Act;
d. Its registration contravenes the laws of the country

13.2 The registrar, upon rejecting the registration of any national, or foreign organization, shall inform the same, in writing, of the reasons for such decision.

13.3. The decision of rejection of registration may be appealed to the minister, within fifteen days.

In the revised proposed law of 2017, these have generally remained the same, the only difference being that item 13.1 (a) and 13.1 (d) have been merged and rephrased under one clause. However, in the proposed revisions for the 2017 law, and as aforementioned, two new conditions that need to be satisfied for an organization to qualify for registration are being proposed. These were the requirement that the organization seeking to register to have first been registered at the state level and been working for at least 2 years and a second requirement that requires the applicant to provide...
These two (proposed) additional conditions, which if unfulfilled, give the Registrar the right to reject an organizations registration will be problematic. The first one of having been registered and working at the state level for at least 2 years, would disallow any new organization whose purpose and/or activities are more national in scope (and not specifically state focused) and whose members might be from across the country from having that national identity/scope and being able to register. The second one which requires the applicant organization to present evidence of its financial and technical ability to work on a national level is vague and subject to different interpretations.

Furthermore, the Rejection provisions\textsuperscript{14} in both the current 2006 law as well as the proposed revised law for 2017, do not make any reference to the time limit that the Registrar would need to make his/her rejection. Practise over the last few years has shown that this represents another problem where requests/applications for registration may remain unattended to for endless periods of time without neither the registration nor a formal rejection being issued.\textsuperscript{15}

Reform recommendation for registration rejections

Rejection of registration should only be possible if the purpose or activities of an organization were found to be prohibited, with clear and precise expression of such prohibited activities being made elsewhere in the law.

The reform recommendations that have been proposed for registration would address this issue. More specifically the suggested clause would read –

\textit{Article 13.1. Applicants/applications for registering an organization may not be rejected for any reason other than failure to submit the required documents as stipulated in Article 9.1, and any applicant/application shall be provided with a proof of submission of their application with reference to the date and time that the application was made.}

\textsuperscript{14} Article 13 of the Voluntary and Humanitarian Work (Organization) Act, 2006 and Article 20 of the proposed act for 2017

\textsuperscript{15} In numerous instances organizations seeking registration have also reported of being told by an employee of the Registrar that their application has been rejected only verbally/informally and without any written notice to that effect.
Article 13.2. The Registrar upon finding any application to be incomplete or in contravention of any of the laws of the land shall within a period not exceeding 30 days inform the applicant (in writing) thereof to make the necessary adjustments as to remove the discrepancy.

**Rejection of registration should only be possible if the purpose or activities of an organization were found to be prohibited, with clear and precise expression of such prohibited activities being made elsewhere in the law.**

Cancellation of registration

Cancellation of registration, referred to in the 2006 law under the heading “Striking the registration off”, is a power vested in the Registrar and may be made under certain conditions. Article 14.1 of the current law states that —

**Article 14.1** The registrar may strike off the registration of the national, foreign or charitable organization, or civil society organization, registered under the provisions of this act, after his conducting the necessary inquires and being convinced with the following, that:

a. The registration has been obtained by forgery, or the way of fraud, or upon false information;

b. The non-governmental, or charitable organization, or civil society organization has contravened the provisions of this act, the regulations or any other law in force;

c. The organization concerned has failed, without acceptable justification, in practicing its activities for a period of a full year;

d. The organization used the humanitarian aid for obtaining unlawful gains;

e. The organization has, by decision of its general assembly, presented an application to approve its voluntary dissolution, or strike its registration off.

In the revised law of 2017, both revisions as well as new items/clause are being proposed to this Article. Item (c) is being revised such that a new period of 2 years instead of the previous 1 year period, of not having been active, allows cancellation of an organizations registration. Two new items/clauses are being proposed to be added to this article. A first clause would allow the Registrar to cancel an organizations registration if the organization “fails to convene its general meeting and does not file its performance report for two consecutive years”, and a second one which allows cancellation “if the organization contravenes any of its articles of association (or its constitution)”.

Item (c) which allows a registration to be revoked in the event that it fails to practice, “without acceptable justification” its activities for a period of one year (being increased to 2 years in the proposed 2017 law), is problematic in two ways. Firstly, the term “acceptable justification” leaves it
to the discretion of the Registrar to establish what might be acceptable or not. Secondly the clause/item does not allow for an organization to suspend itself (or its activities) and without having to undergo solvency or complete dissolution.

The proposed additional items in the revised proposed law of 2017 are also problematic and conflictual. The proposed item/clause that allows the Registrar to cancel/revoke an organizations registration in the event it “fails to convene its general meeting and does not file its performance report for two consecutive years” does not make allowance for organizations (or network) that might have as part of their articles of association the requirement to convene its general meeting only every 3 years (or for that matter any period over 2 years). Thus an organization (or network) whose articles of association stated that the general assembly of the members was to convene every say 3 years would find itself unable to satisfy this new item/clause and be subject to having its registration revoked or it would have to violate its constitution and convene an assembly of its members every two years (in which case it would also be subject to having its license revoked by the Registrar because it would have violated it constitution as per the other new proposed clause.

Reform recommendations for cancelling registration

Item (c) of Article 14.1 to be revised such that it would only be possible for the Registrar General to cancel an organization’s registration by a final court order issued by a relevant court and ordering its dissolution or as the one of the current provisions in the law states – the organization puts forth a request from its general assembly or its country director requesting its voluntary dissolution. A revised clause to Article 14.1 (c) would thus read –

The Registrar General may cancel the registration of any national, foreign or charitable organization, or civil society organization, registered under the provisions of this act, ONLY if -

He has secured a final court order from the relevant court to that effect:

He has received in writing a request from the organizations general assembly or country director to voluntary dissolve itself.

Appeals, Privileges and discretionary powers

Provisions for appeals are provided for in both the 2006 law and the proposed 2017 act. Similar across both laws are the areas/issues against which appeals may be made. These are decisions by the Registrar related to –

1. Rejection of registration of a new organization
2. Cancellation of registration of an existing/registered organization
3. Penalties and/or sanctions being levied on a registered organization

In the case of the first (rejection of registration) these may be appealed within a period of fifteen (15) days. Decisions to cancel an existing registration may be appealed within 30 days. And decisions related to penalties/sanctions may be appealed within a week. Appeals are first made to the Commissioner and if within a period of one month the Commissioner does not respond to the appeal then the applicant can appeal to the Minister, within a period of fifteen (15) days.
The only changes in the appeals provisions is that wherein the 2006 law the appeals provisions were scattered throughout the document under the different sections, in the proposed draft law they have been tidied up and clustered together under the title “Appeals”.

Discretionary powers in both the 2006 law and the proposed 2017 act are given to the Minister and the Registrar. Discretionary powers given to the Minister (as per the 2006 law) in relation to the registration allow him to

”...approve the registration of any organization, upon an application presented by less than thirty members, with the same conditions set out in the said sub-section ; on condition of setting forth the financial ability, sustainability and sources of funding the organization ; intended to be registered.”

These same discretionary power is provided for in the proposed act for 2017 but has been transferred to the Commissioner rather than the Minister.

Discretional powers are also found in the article related to rejection of registration. Article 13.1 of the 2006 law reads –

*The registrar may reject the registration of any organization where:-*

- a. The activities, which it practices, are inconsistent with principles provided for in section 5;
- b. The application includes false information, or inconsistent with the registration conditions;
- c. The organization fails to satisfy the registration conditions, set forth in section 9;
- d. The activity, or work which the organization intends to practice, contravenes the law.

Such powers without any recourse to technical or specialised testimonies or bodies places the ability to reject an applicant’s registration solely under the judgement of the Registrar, and may easily be abused.

Moreover, the discretionary powers extend to give both the Commissioner as well as the Registrar powers that are usually only reserved for the judiciary. Article 21.1 (i) of the Voluntary and Humanitarian Work Organization Act, 2006 on competencies of the commissioner reads:

“Conducts preliminary inquiries, with any organization, to ascertain the presence, or non- presence of any legal contraventions, and take the necessary legal proceedings, with respect thereof, with the competent judicial bodies, where the matter so requires;”

Punitive actions and penalties are also given to the Registrar, rather than reserved for the court to decide the appropriate punitive measure or penalty. Article 24.2. and 24.3 of the current act read –

“24.2 In case any organization committing any other contravention, the registrar, upon approval of the commission, may inflict thereon any of the following sanctions:-

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16 Article 9.2. of the Voluntary and Humanitarian Work (Organization) Act, 2006
a. Drawing attention;
b. Warning;
c. Freezing the organization activity, for a term not exceeding six months.

24.3 Without affecting the right of the registrar to take any criminal proceedings, against any person, or people for committing a contravention of the provisions of this act, or regulations made there under, the registrar may deprive the person, or persons concerned of practicing any voluntary humanitarian activity in the Sudan, for a term, not exceeding one year.”

In the new proposed 2017 act the same penalties and sanctions apply but have been slightly reworded and with one major addition being made. Article 26.5.(d) give the Registrar the right to dissolve the executive/governance structures of the organization and appoint a steering committee to oversee the affairs of the organization. This represents a new and dangerous precedent in terms of the ability of a state-employed individual to take over what is supposed to be an independent organization and replace its leadership and top executives with persons that he/she identifies.

Reform recommendations on appeals provisions and discretionary powers

The appeals process in both the current 2006 act as well as the proposed act for 2017 is problematic in that it is unnecessarily lengthy and delays the affected organizations recourse to the formal justice system, and during this prolonged process material as well as reputational damage is being compounded by the affected organization.

Both the Registrar and the Commissioner fall under the supervision/authority of the Minister, consequently, it would be more sensible to reduce the process in terms of time and allow appeals on any decisions (on the areas presented) by the Registrar to go directly to the Minister.

Reform to the law should ensure the removal of any discrestional powers or powers that are usually reserved to the judiciary. As aforementioned, rejection of registration should not be possible under a new and reformed law. The same applies for the discrestional power given to the Commissioner to override the requirements for registration, no such power should be given to the authority/entity overseeing and managing the registration process of organizations. Punitive measures and actions should be left for the courts/judiciary to determine and decide upon.

More importantly the proposed addition of Article 26.5.(d) in the new law for 2017, represents a dangerous precedent in terms of the ability of a state-employed individual to take over what is supposed to be an independent organization and replace its leadership and top executives with persons that he/she identifies. This should not be allowed and the dissolution of an organization or replacement of members of an executive body of an organization should only be carried out in accordance with the constitution of the said organization, and by its members or governing body.
Networks and networking

The interpretations section of the Voluntary and Humanitarian Work Organization Act, 2006 defines Networks as

“national and foreign non-governmental voluntary organizations networks, working inside the Sudan.”

However, this definition does not accurately represent the term. As a noun, network means ‘a group or system of interconnected people or things’, and as a verb, to network means ‘to interact with others to exchange information and develop professional or social contacts’. (Source: online dictionary).

Moving beyond interpretations and meanings, Article 15.2 of the same law goes on to state –

“non-governmental, or charitable organizations, or civil society organizations of similar objects and registered, in accordance with the provisions of this act, may establish networks, between themselves, and with other regional and international organizations, for the purpose of exchange of experiences, promoting the professional performance thereof and rally the joint efforts”.

This Article was welcomed by Sudanese CSOs and for once the legislation did not go on to further complicate matters by including the phrase “as the regulations may specify” as in most other instances of the law. However, despite the clarity of this Article in its non-conditionality, the HAC nonetheless went on to develop regulations\(^\text{17}\) that introduce controls and restrictions on the free and unconditional right of organizations to come together and form networks.

Requirements include the need to have at least ten (10) member organizations when forming a network, and to present several documents (objectives of the network, membership requirements, organizational structure, etc.) to the Registrar whereupon he/she would issue a registration certificate recognizing the network. A fee is also required to register the network. Without this formal procedure organizations are not allowed to network with each other whether informally or formally.

This restriction is not only in violation to Article 15.2 of the law but also greatly impacts the effectiveness and capacity development of national organizations. Moreover, a network should be able to acquire recognition by virtue of it being comprised of already legally registered entities, and need not have a formal structure/registration unless it chooses to. NGOs should be able to freely network and form coalitions with each other, be that issue based or geography-based, temporary or permanent as they choose and without the need to have prior authorization from the Registrar or the HAC.

\(^{17}\) Article 5 of the HAC regulations for 2013
CONCLUSION AND RECOMMENDATIONS

Finally, it is important that the government sees that democracy, the economy, peace, security, basic rights and freedoms are not countervailing interests, and that enacting legislation designed to curb the freedom of civil society would only serve to undermine stability and sow the seeds of anger, radicalization and continued instability.

Legislation, regulations and policies present the legal basis on which the state may organize the work as well as support the progress and development of civil society. However, in contexts such as the Sudan (as well as many other countries) and where one political party dominates the judiciary, the legislature and the executive branches of government, good governance - the system of "checks and balances", or separation of powers is critically undermined. Consequently, the notion of 'rule of law' is distorted and what transpires is a state of 'rule by law' where laws, regulations and policies are being made to ensure and safeguard the status quo or interests of the rulers rather than regulate and uphold the rights of the people. This has been the case with the HAC law as well as several other laws in Sudan which have been used to control civil society and restrict the space for human rights work, and any other watchdog role that civil society plays in relation to the government.

Moreover, with the growing civil unrest and the conflict in the two areas of South Kordofan and Blue Nile states as well as the continued unrest in Darfur, the regime in Sudan is increasingly cloaking its restrictions and repressive actions in justifications around “national security” and labelling organizations as “foreign agents” working on behalf of a foreign agenda and thus justifying the need to control their access to foreign funding. Yet the law, besides restricting funding from foreign entities also greatly restricts organizations from generating income from their programs, and without any relevant funding being availed by the state which NGOs might tap into, the dependency on foreign-funding becomes inevitable. There is an urgent need to review provisions related to funding and, where necessary, amend such provisions to ensure compliance with Sudan’s constitution, international agreements and covenants and address the syndrome of national organisations dependence on foreign funding.

There is a deep level of mistrust and antagonism between civil society and the government which is reflected in the prevailing laws and regulations that govern the work of civil society in Sudan. In some cases, the criticism and reservations held by government authorities towards CSOs is legitimate and may be constructive; however, at other times such criticism aims to curtail the space for CSOs and justify restrictive legislation. On this front, self-regulation and developing self-regulatory initiatives that may address the legitimate concerns and criticisms of the government towards civil society would contribute to improving the legislative environment impacting CSOs in Sudan. Previous efforts to develop a code of conduct/ethics that were championed by Sudanese civil society activists and
leaders in the early CPA years need to be revisited and augmented with self-regulatory initiatives that build public trust and complement/pre-empt government regulation.

Fuelling the criticism on the part of CSOs regarding the laws and regulations governing their work is the process in which these laws are being developed and the lack of consultation with the very actors for whom the law is designed to regulate. Claims by the HAC that the law (or revisions of it thereof) were subjected to the input and feedback of Sudanese CSOs are questionable and if true lack process, rigour and transparency. The process of developing the law should to the furthest extent involve a wide spectrum of CSOs that are carrying out programming in different fields. Special attention must be given to those organizations developing and running programs related to human rights monitoring, democratization and good governance such that their independence is safeguarded. Moreover, consultations must also be carried out in a transparent way where those consulted and the deliberations emanating from the consultations are made available in the public domain and to the relevant parliamentary committee which reviews and endorses the draft laws.

Summary of reform Recommendations
Regarding the current law and any future revisions, the following schedule represents a summary of some of the critical articles that need revision as well the proposed revisions and reforms being recommended by civil society. The schedule is organized in five key areas notably, Funding, Registration, License Renewal, Rejection of registration, and cancellation of registration.

**FUNDING AND GRANTS RALLIED AND RECEIVED**

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<td><strong>Article 7.1.</strong> Grants and rally of funding for organizations programme shall be through a project instrument to be approved by the commission, as the regulations may elaborate.</td>
<td><strong>Article 7.1.</strong> Civil society organizations registered in accordance with the provisions of this act may receive funds – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, multilateral agencies, and private sector subject only to the laws generally applicable to customs, foreign exchange and money laundering.</td>
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<td><strong>Article 7.2.</strong> No civil society organization, registered in accordance with the provisions in this act shall receive funds, or grants from abroad, from an alien person internally or from any other body, save upon approval of the ministry thereof.</td>
<td><strong>Article 7.2.</strong> Any entity receiving funds from foreign entities that are not registered in Sudan must notify the HAC commissioner of such and disclose in writing the purpose, amount and entity that is donating the funds.</td>
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Article 9.1. for the purposes of registration of national voluntary and charitable organizations and civil society organizations, the following conditions shall be satisfied, namely that:

(a) The organization shall present, to the registrar, an application including a list of names and addresses of the founder members of the organization; provided that their number shall not be less than thirty members;

(b) a copy of the organization constitution, and its organization chart, shall be attached to the application;

(c) The temporary manager, the higher executive responsible person, the board of directors or the preparatory board of trustees shall attach an authorized decision, from the general assembly for establishment of the organization.

(d) The organization shall pay the fees prescribed for registration;

Article 9.2. notwithstanding the provisions of sub-section (1) the minister may approve the registration of any organization, upon an application presented by less than thirty members, with the same conditions set out in the said sub-section; on condition of setting forth the financial ability, sustainability and sources of funding the organization; intended to be registered;

Article 9.3. Unless any of the purposes or activities stated in the documents of the organization is found to contravene any of the laws of the land, a certificate of registration shall be issued by the Registrar within a period not to exceed thirty (30) days.

Article 9.4. Any organization that is issued with a registration certificate will have its article of association, its listing of founding members and principle place of business published on a public registry that is maintained by the Registrar.

LICENSE RENEWAL

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<td>There shall annually be renewed the licence of every organization as to such conditions, as the regulations may specify.</td>
<td>Article 11.1. Registered organizations shall have their license/registration renewed at the end of every year, and upon submission of the required documents stated herein –</td>
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a. Articles of association (if modified or changed)  
b. Audited financial statements  
c. Narrative report  
d. Updated List of members  
e. Updated list of serving board of directors and principal officers  

Article 11.2. Unless the applicant fails to submit any of the required documents or the organizations purpose or activities are found to be in violation of Article 13.1, a renewed certificate of registration shall be issued by the Registrar within a period not to exceed fifteen (15) days.

### REJECTION OF REGISTRATION

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| **Article 13.1** The registrar may refuse the registration of an organization only if -  

a. The activities of the organization are incompatible with the principles governing humanitarian work.  
b. The application contains false information  
c. The organization fails to satisfy the conditions laid down in section 9.1 and 9.3 of the Act;  
d. Its registration contravenes the laws of the country  

**Article 13.2** The registrar, upon rejecting the registration of any national, or foreign organization, shall inform the same, in writing, of the reasons for such decision.  

**Article 13.3.** The decision of rejection of registration may be appealed to the minister, within fifteen days.  

**Article 13.1.** Applicants/applications registering an organization may not be rejected for any reason other than failure to submit the required documents as stipulated in Article 9.1, and any applicant/application shall be provided with a proof of submission of their application with reference to the date and time that the application was made.  

**Article 13.2.** The Registrar upon finding any application to be incomplete or in contravention of any of the laws of the land shall within a period not exceeding 30 days inform the applicant (in writing) thereof to make the necessary adjustments as to remove the discrepancy.
## STRIKING THE REGISTRATION OFF

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<td><strong>Article 14.1.</strong> The registrar may strike off the registration of the national, foreign or charitable organization, or civil society organization, registered under the provisions of this act, after his conducting the necessary inquires and being convinced with the following, that:-</td>
<td><strong>Article 14.1.</strong> The Registrar General may cancel the registration of any national, foreign or charitable organization, or civil society organization, registered under the provisions of this act, ONLY if -</td>
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<td>c. The organization concerned has failed, without acceptable justification, in practicing its activities for a period of a full year;</td>
<td>a. He has secured a final court order from the relevant court to that effect:</td>
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<td></td>
<td>b. He has received in writing a request from the organizations general assembly or country director to voluntary dissolve itself.</td>
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## CONTRAVENTIONS, PENALTIES, SANCTIONS AND APPEALS

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<td><strong>Article 23.</strong> There shall be deemed to have committed a contravention, every person, or group of persons, who practice the activity of voluntary organization, without registration in accordance with the provisions of this act.</td>
<td><strong>Article 23.</strong> Any person, or group of persons, wishing to associate together informally for a specific purpose or end, and without seeking to acquire a legal personality, may do so freely for as long as the purpose of their association does not contravene any of the laws of the land.</td>
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<td><strong>Article 24.</strong> Whoever contravenes the provisions of section 23 shall, upon conviction, be punished with a fine, together with the funds obtained by the organization may be confiscated.</td>
<td><strong>Article 24.</strong> Persons or groups of persons wishing to associate themselves formally and acquire access to any benefits of being recognized as a legal personality may do so in accordance with the provisions of this law.</td>
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