

A Critical Analysis of the Regulation of Civil Society Organizations (CSO) Engagement in Income-Generating Activities under Ethiopian Laws

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Abstract

The Civil Society Organizations Proclamation [No. 1113/2019] (CS Proclamation) accompanied by the Directive enacted by the Authority for Civil Society Organizations (ACSO) to implement the Proclamation, and Directive to Determine the Conditions under which CSOs are Engaged in Income-Generating Activities [Directive No. 937/2022] (IGA Directive), allows CSOs to conduct business as per relevant business licensing and registration requirements. Under the CS Proclamation, interested CSOs can operate businesses through different modes, notably by starting new businesses (companies), owning shares in existing businesses, soliciting public contributions, or being a sole proprietorship. IGA Directive has also provided the modes of the CSO's engagement in business activities. However, the provisions of the CS Proclamation and IGA Directive governing the modes of engagement of CSOs in income-generating activities suffer from ambiguities and discrepancies. It is unclear from these provisions whether CSOs are permitted to establish only company forms or all types of business organizations recognized by the Revised Commercial Code (RCC) to operate businesses. Besides, the laws do not specify the details of how a CSO can pursue a business as a sole proprietorship. Thus, this article critically examines these ambiguities and discrepancies in governing CSOs' engagement in income-generating activities and proposes their possible amendments.

Keywords: Authority of Civil Society Organizations, Civil Society Organizations, Commercial Activities, Ethiopia, Fund, Registration

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1. Introduction

Civil society organizations (CSOs) play a vital role in society by fulfilling human needs and supporting profitable firms and governmental activities.¹ However, they are now engaging in commercial activities to generate income to support their primary objectives.² Since CSOs are not entities established to pursue profit-generating activities, securing the necessary funds to pursue their objectives may become a challenge at some point in their life span. Hence, in a way, allowing them to engage in some income-generating activities under some limitations contributes to their sustainability. One online newspaper published in 2020 pointed out that Ethiopian CSOs face challenges such as declining funding, lack of information on calls for proposals, weak coordination, and limited staff capacity.³ A study conducted earlier also revealed that CSOs in Ethiopia face financial unsustainability by due to inadequate funding and lack of understanding and practice in strategic fundraising and governance.⁴ In this regard, addressing internal capacity limitations, improving transparency in funding decisions, and fostering positive relationships with stakeholders were some of the mechanisms believed to tackle these financial challenges.⁵ CSOs in developing nations, like Ethiopia, have greatly benefited from foreign funding.⁶ Nonetheless, as foreign funds may be inadequate or, at times, unreliable, CSOs need to diversify their funding base and minimize dependence on a few donors.⁷ With this assumption that CS Proclamation and IGA Directive have provided wider opportunities for CSOs to engage in business activities to address financial challenges and reduce CSOs' dependency on a few donors.

¹ Domingo Soriano & Miguel-Ángel Galindo, 'An Overview of Entrepreneurial Activity in Nonprofit Organizations in the International Context', *Small Business Economics*, Vol. 38, No. 3, (2012), PP. 265-269.

² Salamon Lester M. and Helmut K. Anheier, 'The International Classification of Nonprofit Organizations', ICNPO-Revision 1, the Johns Hopkins Institute for Policy Studies (1996) Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, Vol-19 P-3, available at: <https://asauk.org.uk/wp-content/uploads/2018/02/CNP_WP19_1996.pdf> Accessed on December 7, 2023.

³ Sosen Lemma, 'In Ethiopia, Exit Presents Real Challenges for Civil Society Organizations', (November 2, 2020), <<https://www.intrac.org/in-ethiopia-exit-presents-real-challenges-for-civil-society-organisations/>>, available at: Accessed on May 30, 2024.

⁴ Sisay Seyoum, 'Financial Sustainability of Ethiopian Resident Charity Organizations: Challenges and Opportunities' (Executive Master of Business Administration (EMBA) Degree Thesis, AAU, and June 2015), available at: <<https://communityresearch.org.nz/wp-content/uploads/formidable/Sisay-Seyoum.pdf>> Accessed on May 30, 2024.

⁵ Ibid

⁶ Yntiso Gebre, 'Civil Society and Income Generation Activities in Ethiopia', (2012) Tracking Trends in Ethiopia's Civil Society (TECS) Research Paper, P. 23, available at: <<https://www.ajol.info/index.php/asr/article/view/163707>> Accessed on May 25, 2024

⁷ Ibid

It should be also mentioned that Ethiopia is not unique in permitting CSOs to engage in revenue-generating activities. Legislation in a large number of foreign national jurisdictions permits CSOs—or entities comparable to them that may go by different names depending on the jurisdiction in question—to participate in various forms of commercial activity. However, there are differences in the ways that different nations regulate CSO participation in revenue-generating ventures. While some nations have no restrictions on charity conducting commerce, others only allow it under very rigorous guidelines.⁸ CSOs can engage in business activities under three basic models: the non-primary purpose business model, which allows CSOs to operate without limitations; the relatedness rule, which requires a relationship between business activities and the organization's purpose; and the exclusive doctrine, which prohibits CSOs from engaging in business activities.⁹ Countries like France, Venezuela, Slovakia, Germany, Denmark, Kenya, and Montenegro adopt this model but strictly regulate it from various perspectives.¹⁰ Some countries also require CSOs to establish subsidiaries for unrelated activities, and¹¹ the relatedness rule requires business activities to be related to the organization's statutory purpose, auxiliary to the primary purpose, and identified in establishing documents.¹² Other limitations include legal form, purpose qualification, registration as a for-profit entity, and income utilization limitations.¹³ The exclusive doctrine also prohibits CSOs from engaging in business activities, but the number of countries applying this model is decreasing.¹⁴

Under the Revised Commercial Code¹⁵, in principle, only traders and business organizations are allowed to engage in business activities upon fulfilling the necessary legal requirements.¹⁶ Conversely, associations are organizations created in accordance with the Civil Code, as amended by Charities and Societies Proclamation No. 1113/2019¹⁷, and are meant to run

⁸ Lester M. and Anheier (n. 2) 3

⁹ Klaus Hopt *et al.*, 'Feasibility Study on a European Foundation Statute', Final Report to the European Commission (2015), P-52. Available at: <<https://efc.issuelab.org/resources/15835/15835.pdf>> Accessed on March 5, 2024.

¹⁰ Belete Addis Yemata, 'The Income Sources of Civil Society Organizations (CSOS) Under the Ethiopian CSO Laws: A Lesson Drawing Analysis', (2020) Jimma University Journal of Law, Vol. 12, pp. 5-8.

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Commercial Code of Ethiopia, 2021, Arts. 11-27, Proc. No. 1243/2021, *Fed. Neg. Gaz.* (Extraordinary Issue), Year 27, No. 23. [Hereafter, the Revised Commercial Code (RCC)].

¹⁶ Id, Art-5

¹⁷ Organizations of Civil Societies Proclamation, 2019, Proc. No. 1113/2019, *Fed. Neg. Gaz.* Year 25, No. 33 [Here in after the 'CSO Procl.'].]

non-profit-making activities. In principle, they are not permitted to engage in any income-generating activity, unlike business organizations, and any violation of this rule will result in their dissolution.¹⁸ The laws governing CSOs do, however, permit them to engage in commercial activities to some extent and subject to certain requirements, notwithstanding the RCC's general prohibition. Art. 63/1/b of the CSO Proclamation allows CSOs to engage in income-generating activities in accordance with the relevant business license and registration laws. In a similar fashion, the Preamble of IGA Directive¹⁹ permits CSOs to engage in income-generating activities. Pursuant to these two legislations, CSOs may carry out income-generating activities through different modes, notably by establishing new businesses (companies), holding shares in existing businesses, collecting public contributions, or conducting business as a sole proprietorship.²⁰ However, the provisions of the CS Proclamation and IGA Directive governing the modes of engagement of CSOs in income-generating activities suffer from ambiguities and discrepancies that necessitate further clarification.

This article critically analyzes the legal regulation of CSOs' engagement in income-generating activities under the relevant Ethiopian laws using a doctrinal legal research approach. It aims to identify legal gaps and ambiguities in the CSO Proclamation and IGA Directive and suggest recommendations for improving the legal regulation of CSOs' income-generating activities. Accordingly, the article is structured as follows: after the introduction, Section 1 provides an overview of the conceptual and legal aspects of CSOs in general and their regulation in Ethiopia; Section 2 gives critical scrutiny of the regulation of CSO engagement in income-generating activities under Ethiopian laws. Then, the article ends with a succinct conclusion and suggestion.

¹⁸ RCC Art. 25 and CC Art. 461. Thus, professional associations and other non-governmental organizations are not, as such, permitted to operate a business. Even a resort by such an organization to profit-making activities would be a ground for dissolution.

¹⁹ The Federal Democratic Republic of Ethiopia Authority for Civil Society Organizations, Directive To Determine The Conditions Under Which Civil Society Organizations Are Engaged In Income-Generating Activities, Directive No. 937/2022 (referred to as the 'IGA Directive' hereunder)

²⁰ Ibid

2. The Conceptual, Legal and Institutional Framework of Ethiopian Civil Society

2.1. Definition and Features

Although there are multiple ways of defining a CSO, it is often defined as an entity that is concerned with its activities toward the realization of a social value-adding mission.²¹ CSOs, in principle, seek to realize such a mission, often through funds collected through donations from donors, either in the form of money, other assets, or volunteer work that the donor delivers to the supported CSO.²² However, there are multiple and possibly confusing expressions utilized in different legislation to refer to CSOs in Ethiopia. The Civil Code and the RCC refer to them as ‘associations’, while the CSO Proclamation utilizes the expression ‘civil associations or organizations.’²³ However, for this work, ‘associations’ are organizations formed to operate non-profit-making activities and established under Art. 404-549 of the Civil Code as amended and/or modified by the CSO Proclamation.²⁴ The CSO Proclamation defines a CSO as ‘a non-governmental, non-partisan, not-for-profit entity established at least by two or more persons on a voluntary basis and registered to carry out any lawful purpose, and includes non-government organizations, professional associations, mass-based societies, and consortiums’.²⁵ This definition accommodates local and foreign CSOs, professional associations, mass-based societies, consortia and charitable entities, trade unions, religious institutions, and traditional or cultural institutions such as *Edir* and *Equb*.²⁶

Also, in order to have a better understanding of the nature of CSOs, it is crucial to make a quick distinction between CSOs and cooperative societies and business organizations (for-profit organizations) in this case. CSOs and for-profit businesses differ significantly from one another in addition to being subject to distinct legal frameworks. A CSO is a type of organization that is prohibited from distributing its net earnings to its members, officers, directors, or trustees.²⁷ While

²¹ CSO Procl. Art. 63

²² G. Michalski, G. Blending, Z. Rozsa, A. Cierniak-Emerych, M. Svidronova, J. Buleca, and H. Bulsara, ‘Can We Determine Debt to Equity Levels in Non-Profit Organizations? Answer Based on the Polish Case’ (2018) *Inzinerine Ekonomika-Engineering Economics*, Vol. 29, pp. 526–535.

²³ A reader should note that the expression ‘CSO’ used in this contribution refers to the same institutions referred to as ‘associations’ in the RCC and the Civil Code, as well as those referred to as ‘civil associations and organizations’ in the CSO Proclamation.

²⁴ Henry B. Hansmann, ‘The Role of Nonprofit Enterprise’, (1980), *The Yale Law Journal*, Vol. 89: No-5, P-838.

²⁵ CSO Procl Art-2/1

²⁶ Id Art-3/2

²⁷ Hansmann (n 20)

a CSO is earning a profit, it is barred from distributing it.²⁸ The net earnings must be retained and devoted to financing further production of services.²⁹ In cases of dissolution, CSO assets are not distributed to members or owners but may be transferred to a CSO working in the same area or another CSO to continue serving the public, depending on the law or legal system.³⁰ Cooperative societies, on the other hand, are autonomous associations democratically controlled by individuals united voluntarily to meet common economic, social, and cultural needs.³¹ They are not meant to pursue profit-making activities like business organizations, but they can collect and distribute incidental profits earned in pursuing their primary objectives. Cooperative societies work mainly to bring economic benefits to their members³², unlike CSOs, which focus on human rights, politics, and charity. The primary objective of cooperative societies is to provide economic benefits for their members.

2.2. The Civil Society Laws of Ethiopia

Ethiopia has a long tradition of informal community-based organizations like *Edir* and *Equb*—self-help associations that operate at the local level and offer mutual socio-economic support to their members.³³ Yet, a formal civil society with a legal personality is a recent development.³⁴ It was only after the downfall of the *Derg* regime in 1991 that CSOs substantially increased in number.³⁵ Following this, in 2009, Ethiopia enacted the Proclamation to Provide for the Registration and Regulation of Charities and Societies, as the first comprehensive law governing CSOs.³⁶ However, this proclamation and its associated directives were generally blamed for violating international standards relating to freedom of association and were eventually replaced by the CSO proclamation.³⁷

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Art. 2/1 of the Cooperative Societies Proclamation, 2016, Proc. No. 985/2016, *Fed. Neg. Gaz.*, Year 23, No. 7

³² Id, art-4

³³ Civic Freedom Monitor ‘Ethiopia’ (8 May 2023), available at: <<https://www.icnl.org/resources/civic-freedom-monitor/ethiopia>> Accessed on September 20, 2023.

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

In general, there are three sets of laws in Ethiopia that govern nonprofit organizations: the Civil Code of Ethiopia, the RCC, and the CSO Proclamation and its implementing ACSO Directives. In the current set-up of the federal system in Ethiopia, the laws governing CSOs are found at both the federal and regional levels. The CSO Proclamation governs organizations operating in two or more regional states in Ethiopia.³⁸ This means an organization operating in only one region is governed by the laws of that region if the region has adopted its own CSO laws or by the relevant provisions in the 1960 Civil Code if the region has not adopted its own CSO laws.³⁹ The federal laws governing CSOs, *inter alia*, include the FDRE Constitution, the CSO Proclamation, Council of Ministers Charities and Societies Regulation No. 168/2009⁴⁰, and several directives enacted by the Civil Society Organizations,⁴¹ Labor Proclamation 1156/2019, Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021, Federal Income Tax Proclamation No. 979/2016, and several legislations having direct or indirect application on CSOs.⁴² Of course, it

³⁸ Article 3/2 of Cooperative Societies Proclamation No. 985/2016 states that: “For the purpose of this provision, organizations operating in two or more regional states mean an organization that implements its main mission in two or more regional states, an organization that has a permanent office in two or more regional states, an organization that has permanent members and operates in two or more regional states, or an organization that collects funds in two or more regional states permanently.”

³⁹ Concerning regional state laws, at the time of the writing, the writer was able to access the laws of only two regional states, i.e., Amhara and Oromia. Amara National Regional State Charities and Societies Registration and Administration Proclamation No. 194/2012, Charities and Societies Registration and Administration Determination, Council of Regional Government Regulation No. 117/2013, and the recently enacted Oromia State Civil Societies Registration and Administration Proclamation No. 254/2024.

⁴⁰ A draft CSO Regulation intended to implement the CSO Proclamation is currently being considered by the Council of Ministers. It is anticipated that Charities and Societies Regulation No. 168/2009 will be replaced by the draft CSO Regulation. Art. 88/1 of the CSO Proc. allows the application of the former Regulation only up to one year from the time of promulgation of the Procl. Yet the writer was unable to verify if the speculated draft CSO Regulation was officially promulgated.

⁴¹ The authority of *civil society organizations* refers to a federal government body that was established in accordance with Article 4 of the proclamation and that was re-established by Proclamation No. 1263/2021 (as amended) to determine the powers and functions of the executive bodies of the federal government. It replaced an entity referred to as the Civil Societies Organizations Agency in the CS Proclamation. The authority has issued several directives by the power given by Art. 89/2 of the CS Proclamation No. 1113/2011. A non-exhaustive list of these directives includes the following: Civil Society Organizations Audit and Performance Reporting Guidelines No. 972/2023; Local Organizations Registration and Management Directive No. 938/2022; Directive No. 939/2022 on Avoiding Conflicts of Interest; Civil Society Organizations Income-Generating Activity Directive No. 937/2022; The Authority for Civil Society Organizations’ Board Appeal Procedure; Complaint Review Committee Appointment; and Rules of Procedure Directive No. 970/2023. Directive No. 936/2022 on the Merger, Division, Conversion, and Dissolution of Organizations, Liquidators, Procurement, Sale, and Disposal of Assets of Civil Society Organizations No. 850/2021 and Civil Society Organization’s Administrative Expenses Implementation Directive No. 847/202

⁴² Several federal laws, such as those governing elections, media, taxes, political parties, etc., have implications for the operation of CSOs. Hence, it is impractical to provide an exhaustive list of federal laws governing CSOs in this short work.

should be noted that the list of federal legislation provided here is merely an illustrative list, as many of the laws indirectly touch upon certain aspects of CSOs in Ethiopia.

2.3. Formation, Registration, and Licensing of CSOs

Ethiopia is one of the countries where registration is mandatory.⁴³ The processes of formation and registration are subject to the general principles provided by the law.⁴⁴ The proclamation requires the authority to register any CSO,⁴⁵ and it bans CSOs that are not registered from engaging in any activity.⁴⁶ The requirement of legal registration applies to all forms of CSOs without exception.⁴⁷ Yet, the documentary and procedural requirements for registration vary with the respective legal forms. The specific requirements for registration for each type of local CSO are stated under Local Organizations Registration and Management Directive No. 938/2022. The law puts no explicit restrictions on who can be founders of a CSO, and there is no limitation on the number of founders.⁴⁸ Accordingly, natural or legal persons can establish a CSO. ACSO is authorized to refuse registration to CSOs whose aims or activities are contrary to public morals.⁴⁹ A CSO will acquire legal personality once it has registered and satisfied the registration procedures outlined in this proclamation.⁵⁰ Among the rights that come with acquiring legal personality are the ability to sue, be sued, and enter into contracts; the freedom to operate in any industry as long as certain legal requirements are met; and the ownership, management, and transfer of both immovable and movable property.⁵¹

⁴³ Id, Art-57/1

⁴⁴ Id., Art. 16; also see Art. 4 of Local Organizations Registration and Management Directive No. 938/2022.

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Id. Art. 6/9 indicates that the CSO sector in Ethiopia consists of four main legal forms, i.e., foreign organizations, charity organizations, professional associations, and local organizations.

⁴⁸ Debebe Hailegebriel, 'Defending Civil Society Report on Laws and Regulations Governing Civil Society Organizations in Ethiopia', (2008), P. 8. Available at: <https://www.eia.nl/documenten/00000443.pdf>, Retrieved on: September 12, 2023

⁴⁹ Under Art. 59/1 of the CSO Proc., the Authority may also refuse to register a charity or society because 'the proposed charity or society is likely to be used for unlawful purposes or the purpose of prejudicial to public peace, welfare, or good order in Ethiopia'. The proclamation further provides that the agency may refuse registration if the name under which the proposed charity or society is to be registered is considered to be contrary to public morality or is illegal.

⁵⁰ CSO Procl., Art. 61(1)

⁵¹ Id, Art-61/2/3

2.4. Institutional Frameworks

Different regulatory bodies are entrusted with the supervision of CSOs in Ethiopia. The main institutions include the Ministry of Justice, the Authority of Civil Society Organizations, the Civil Society Board, and the Council of Civil Society Organizations. The CSO Proc. also establishes the Civil Societies Board under the Authority with several powers and functions.⁵² The board has a supervisory and advisory role in the administration of CSOs.⁵³ In addition, it has the power to hear appeals against the decisions of the Director-General.⁵⁴ The Board shall, when necessary, set up an independent complaint review committee to investigate the appeal brought to it.⁵⁵ To foster the self-regulation of CSOs, Art. 85 of the CSO Proclamation establishes a Council of Civil Society Organizations governed by the full participation of all civil society organizations. The Ethiopian Civil Society Organizations Council (ECSOC), established in 2019, represents over 4,000 CSOs in Ethiopia.⁵⁶ As an independent institution, it coordinates the civil society sector and establishes an environment for non-state actors to engage in lawful activities like democracy, human rights, elections, and peacebuilding.⁵⁷ The council's functions include enacting a Code of Conduct, advising ACSO on CSO registration and administration, and representing and coordinating the sector.⁵⁸ Its powers and functions are to enact the Code of Conduct for the sector, devise enforcement mechanisms in consultation with the agency, donors, and other stakeholders, advise the agency on the registration and administration of organizations, and represent and coordinate the civil society sector.⁵⁹

2.4.1. Authority of Civil Society Organizations and CSOs in Ethiopia

Since the fall of the Derg regime in 1991, CSOs have expanded their operations, registering religious institutions, philanthropic organizations, NGOs, and associations through the Ministry of

⁵² Id Arts-8-9

⁵³ Ibid

⁵⁴ Id Arts-9, 57(3), 59(5), 70(2), 77(4), and 78(4); Directive on the Appeal Procedure of the Authority for Civil Society Organizations' Board No. 970/2023, The Authority for Civil Society Organizations' Board Appeal Procedure, Complaint Review Committee Appointment, and Rules of Procedure Directive No. 970/2023.

⁵⁵ Id, Art-9/2

⁵⁶ Ethiopian Civil Society Organizations Associations, available at: < <https://www.ecsoc.net/>> Retrieved on May 12, 2024

⁵⁷ CSO Proc. Art-9/2

⁵⁸ Id. Art. 85/5 (a, b, and c)

⁵⁹ Ibid

Interior.⁶⁰ In 2009, the Ministry of Justice conducted structural reform and established a separate implementing agency for charitable organizations and associations, establishing the "Charities and Civil Societies Agency." In April 2018, the agency was renamed "Authority for Civil Society Organizations (ACSO).

The ACSO is a national body in Ethiopia that oversees civil society organizations, ensuring freedom of association, public benefit, and efficient goal achievement. It supports self-regulation and self-administration, strengthens positive working relations with the government, and encourages organizations to have transparent, accountable, and participatory internal governance systems.⁶¹ This authority is accountable to the Ministry of Justice, which is in turn accountable to the Council of Ministers.⁶²

The authority is entrusted with several objectives, powers, and functions.⁶³ The power of licensing, administering registration, operation, and dissolution, and supervising CSOs is given to a special body of the executive branch, established as a separate legal entity called the Authority of Civil Society Organizations.⁶⁴ A website of ACSO indicates that, after the reform (2019), more than 2974 new CSOs were registered based on Proclamation No. 1113/2019.⁶⁵ Of the 4938 ACSO-registered organizations, more than 4395 are local and more than 543 are foreign organizations.⁶⁶ More than 415 CSOs are professional associations, and more than 165 CSOs are disability organizations.⁶⁷

⁶⁰ Ethiopian Civil Society Organizations Associations, available at: <<https://acso.gov.et/en/about-us>> Retrieved on May 12, 2024

⁶¹ Ibid

⁶² Definition of Powers and Duties of the Executive Organs Proclamation, 2021, Art. 98/1, Proc. No. 1263/2021, *Fed. Neg. Gaz.*, Year 28, No. 4

⁶³ CSO Procl Arts 4,5 and 6

⁶⁴ CSO Procl. Art. 6

⁶⁵ (n. 60)

⁶⁶ Ibid

⁶⁷ Ibid

3. The Regulation of Civil Society Organizations' Engagement in Income-Generating Activities under Ethiopian Laws

3.1. An Overview of CSOs' Activities and Income Sources

CSOs in Ethiopia engage in various initiatives aimed at social development, poverty alleviation, and meeting the basic needs of specific population segments. Likewise, the income sources of these CSOs vary widely.⁶⁸ CSOs engage in a wide range of activities, some of which have political and philosophical goals, politics, sports, hobbies, belief systems, self-help organizations, and community groups.⁶⁹ CSOs are vital for the protection and promotion of human rights as they provide legal aid and several other services to individuals who have been affected by violations of human rights.⁷⁰ Additionally, they offer aid for growth and relief.⁷¹ Generally, their activities can be categorized into general, economic, and political activities. First, once CSOs acquire legal personality, they will have the capacity to engage in all activities of legal persons, such as entering into contracts, suing and being sued, and owning, administering, and transferring movable and immovable property in their own name.⁷² Second, CSOs may engage in any lawful economic activity to accomplish their objectives⁷³ upon obtaining the necessary permit from the government body overseeing the sectors they are engaged in.⁷⁴ Last, CSOs also engage in political activities. The Proclamation does not forbid CSOs from participating in political activities, even if it defines those CSOs as "non-partisan".⁷⁵ Contrastingly, the proclamation prohibits foreign organizations

⁶⁸ Yosalem Negus, 'The Formation and Registration of Civil Society Organizations under Proclamation 1113/2019', (LL.M. Thesis, AAU, 2021) PP-9-10, available at: <<http://etd.aau.edu.et/handle/123456789/30527>> Accessed on February 2, 2024

⁶⁹ Ibid

⁷⁰ 'NGO Laws in Sub-Saharan Africa, (2011) Global Trends in NGO Law, Volume 3, Issue 3, P. 1.

⁷¹ Ibid

⁷² CSO Procl. Art. 61

⁷³ Id Art-62/1

⁷⁴ Id Art-62/10. In principle, CSOs may solicit, receive, and utilize funds from any legal source, including foreign sources, to fulfill their objectives. This includes, in the language of CS Proclamation, 'the right to engage in any lawful business or investment activities, under relevant trade and investment laws, to raise funds to fulfil their objectives'. As will be discussed later, income generated from such activities must be used to cover administrative and program costs of the organization and may not be distributed to members or workers of the organization. CSOs engaging in income-generating activities may do so by establishing a separate business organization (i.e., a company), acquiring shares in an existing company, collecting public donations, or operating their business as a sole proprietorship.

⁷⁵ Id. Art. 2/1. It remains to be seen what types of activities the government will view as "partisan" and "non-partisan" and how this interpretation will impact organizations that engage in "partisan" activities.

and local organizations established by foreign citizens residing in Ethiopia from engaging in lobbying political parties, engaging in voters' education, or making election observers."⁷⁶

The Ethiopian government aims to transform civil society organizations into a service sector by regulating funding sources and CSOs' use.⁷⁷ The Proclamation allows CSOs to receive monetary and non-monetary donations from domestic and foreign donors. They can generate money from various sources, including businesses, passive investments, and gifts. A comprehensive examination of how the income sources of CSOs are regulated in Ethiopia in light of the dominant international practices is provided in a recent publication and won't be repeated here.⁷⁸ CSOs have the right to engage in lawful business or investment activities to accomplish their objectives, subject to relevant trade and investment laws.⁷⁹ This includes, in the language of the CSO Proclamation, 'the right to engage in any lawful business or investment activities in accordance with relevant trade and investment laws and to raise funds to fulfill their objectives'.⁸⁰ This provision reveals three key aspects of the right to do business activities. The first one is the requirement that the business or investment activity be lawful.⁸¹ Second, CSOs engaging in business activities be subject to the application of relevant trade and investment laws. It is clear that the CSO law is not expected to provide special laws governing the business activities of CSOs as it is reasonable to make cross-references to the governing commercial and investment activities. Finally, the primary aim of CSOs engaging in a business is to fulfill its principal objectives. Hence, engagement in business activities remains supportive of the CSOs' initial goal.

3.2. Modes of CSOs Engagement in Income-Generating Activities

Once it is established that a CSO has a right to engage in any lawful business and investment activity in accordance with the relevant trade and investment laws, The ACSO has already issued the IGA Directive, which regulates CSOs' involvement in business. The detailed rules on the implementation of CSOs right to do business are prescribed by IGA Directive.⁸² The following

⁷⁶ Id. Art. 62/5

⁷⁷ Dina Lupin, 'The Limits of "Good Law": Civil Society Regulation in South Africa and Ethiopia', *Journal of African Law*, 66, 2 (2022), 229–255, P-236.

⁷⁸ Belete (n 10)

⁷⁹ CSO Procl Art-63/1/b

⁸⁰ CSO Procl Art-63/1/b

⁸¹ This requirement is not unique to CSOs only, as business organizations too are allowed to operate businesses based on lawful activities.

⁸² The IGA Directive, under its Preamble, states that: 'Whereas, it is stipulated under Article 63(1)(b) of Civil Society Organizations Proclamation No. 1113/2019 that an organization engaged in income-generating activities, in

sub-headings critically address issues pertaining to the modes of engagement through which CSOs take part in income-generating activities.

3.2.1. Establishment of a Business Organization

As stated earlier, the CSO Proclamation and IGA Directive provide different modes for CSOs that wish to engage in income-generating activities. Accordingly, the first mechanism is through establishing a separate subsidiary business organization. On this specific mechanism, Art-64 of the CSO Proclamation reads ‘an organization which engages in income generating activities in accordance with Article 63(1) (b) of this Proclamation may do so by establishing a separate business Organization (company), acquiring shares in an existing company, collecting public collections or operating its business as a sole proprietorship’ whereas, Art-4/1 of IGA Directive states that; any civil society organization authorized to engage in income-generating activities by its bylaws may establish an independent business organization that generates income for the organization in accordance with the relevant commercial law and the commercial registration and licensing law’.⁸³

However, a careful reading of these two provisions reveals an ambiguity about this mode of engagement. Art. 64 of the CSO Proclamation utilizes the expression ‘by establishing a separate business organization (i.e., a company)’. The expression ‘business organization’ creates the impression that CSOs may utilize any form of business organization recognized under the RCC. Nonetheless, the provision, after stating the generic term ‘business organizations’, adds the expression ‘company’ in a parenthesis, potentially creating doubt about whether CSOs are allowed to use partnership forms of business organizations recognized under the RCC or whether they are restricted to using company forms only. The English version of the IGA Directive repeats the same ambiguous statement by stating, ‘a civil society organization may establish a business company by selecting one of the types of business specified in the commercial law’.⁸⁴ This provision has a connotation that any form of business organization recognized by our RCC⁸⁵ could be utilized.

accordance with the relevant business license and registration laws, may carry out income-generating activities by establishing new businesses (companies), holding shares in existing businesses, collecting public contributions, or conducting business as a sole proprietorship’

⁸³ IGA Directive, Art-4/1

⁸⁴ IGA Directive, Art-5/1

⁸⁵ General Partnership, Limited Partnership, Limited Liability Partnership, Joint Venture, PLC, One Member PLC, and Share Company

Still, Art. 4/2 of the same Directive utilizes the ambiguous expression ‘business company’ to refer to a business organization that can be established by a CSO to pursue income-generating activities. The overall intent of the laws, however, seems to suggest that any type of business organization recognized by the RCC may be used, even despite this ambiguity. IGA Directive also states, ‘any CSO authorized to engage in income-generating activities by its bylaws may establish an independent business organization that generates income for the organization in accordance with the commercial law and the commercial registration and licensing law.’⁸⁶ From this specific provision, one can be tempted to rule out the doubt mentioned above by concluding that any form of business organization recognized by the relevant laws can be utilized by CSOs. Nonetheless, a clear position can only be realized through careful drafting of the laws in future amendments.

The operation of business via establishing a business organization is subject to some mandatory statutory regulations. Firstly, a plan to form a business organization should be authorized by the bylaws of the concerned CSO.⁸⁷ Yet, a decision taken by an authorized body of a CSO will suffice in the absence of any express authorization provided by the bylaws.⁸⁸ Secondly, the established business organization should be independent and must have a different name from the CSO(s) establishing it.⁸⁹ This aspect of the independence of the business organization from the CSO that formed it is manifested in many aspects. For instance, when appointing a member of the management of a CSO as a member of the board of directors of a business organization, it should be ensured that the activities of the CSO will not be disrupted. Besides, the use of assets and resources by the CSO and the business should not be mixed in any way. Here it is imperative to note that, even though the business entity formed by a CSO to engage in income-generating activities has a separate legal personality distinct from the CSO that formed it, when a CSO dissolves, in principle, the BO dissolves as well, except that when continuity is deemed necessary, it may be transferred to another CSO.

⁸⁶IGA Directive, Art-4/1

⁸⁷ Id, Art-4/2

⁸⁸ Sisay Habte, ‘Doing business via non-profits: a look at the newly enacted directive on income-generating activities’ <<https://tbestlaw.com/doing-business-via-non-profits-a-look-at-the-newly-enacted-directive-on-income-generating-activities/#:~:text=Any%20CSO%20may%20engage%20in,the%20Organization%20will%20be%20sufficient>> Accessed on January 23, 2024.

⁸⁹ IGA Directive, Art-4/1

Thirdly, the concerned CSO is not free to determine how to secure the necessary initial capital to establish a new BO as well as the extent of debt incurred by the new business organization. A CSO is required to cover funds used for the establishment, registration, and enforcement of related issues.⁹⁰ The financing of the initial capital can be made by the CSO or from other financing sources like banks; yet, it cannot exceed more than 30% of the program costs.⁹¹ The initial capital of a civil society business organization may be paid from a program, from money borrowed from a bank, or from another source.⁹² It should be ensured that the budget allocated for income-generating ventures does not affect the organization's mission and work activities.⁹³ When any CSO desires to establish a business organization, it must ensure that the debt incurred by the business organization or the business it intends to conduct does not hinder or contradict the purpose of the organization.⁹⁴ Also, the CSO must make sure that the debt the organization incurs or the business it plans to undertake will not interfere with or conflict with the organization's mission.⁹⁵

Fourthly, although CSOs are not required to secure the approval of ACSO beforehand to engage in business, a CSO that has established a business organization must notify ACSO within fifteen days of starting commercial operations.⁹⁶ However, it's unclear what exactly the notification's goal is—for example, if the authority has the power to ban a CSO from performing business.⁹⁷ According to one author, the lawfulness of the activities is the only thing that the authorities might be able to verify.⁹⁸ Finally, a CSO who has successfully established a business organization is not totally free to offer its services and goods to all members of society, as the services and goods provided by the business should take into consideration the disabled and community members who need special support. .

⁹⁰ Id, Art-4/4

⁹¹ Id, Art-6

⁹² Id, Art-6/1

⁹³ Art. 6/2 of IGA Directive and Art. 6/3 of Directive No. 937/2022 require that the capital allocated for the establishment of a business be allocated as a program or project cost. However, if the capital is found to be more than the amount mentioned in paragraph 1 of this article, the cost above this amount shall be charged as administrative costs.

⁹⁴ Id, Art-5/2

⁹⁵ Ibid

⁹⁶ CSO Proc Art. 64 (7) and IGA Directive Art-4/3. It must also submit the organization's business license, any necessary certifications of qualification, articles of association, and bylaws in addition to the notification letter.

⁹⁷ Belete (n 10) 11. Perhaps the authority may check whether the services or goods it provides target the disabled and community members who need special support pursuant to Art. 4/5 of IGA Directive.

⁹⁸ Ibid. Well, lawfulness can also be checked by the organs in charge of registering and licensing the IGAs

3.2.2. Buying Stock from an Existing Business Organization

The second mode of CSOs' engagement in income-generating activities speculated under Ethiopian laws is through 'buying stock from an existing business organization'. Any organization can buy shares from an existing business established by another organization or from any other business. If the business finds it profitable, it can use the profit from the shares it buys to buy more shares.⁹⁹ Again, just like the first mode of engagement, a CSO is not allowed to venture into buying shares of existing businesses without restrictions. A balance must constantly be struck between the degree of engagement in business activities and the core non-profit goals of a CSO. Most of the requirements that CSOs must meet for their business operations by establishing a subsidiary business organization also apply to their stock investment.¹⁰⁰ Besides, a CSO that has purchased shares must notify the authority of the purchase within fifteen days.¹⁰¹

A comparable lack of clarity about the first method of involvement mentioned above is found in the IGA Directive regarding CSOs' use of "acquiring company shares" as a means of conducting business. The provision states that 'any organization can buy shares from an existing business established by another organization or from any other business'.¹⁰² This first statement utilizes the expression 'existing business', which arguably seems to accommodate both company and partnership forms as targets. Nonetheless, the second segment of the provision states 'if the business finds it profitable, it can use the profit from the shares to buy more shares'¹⁰³ refers to company forms only. Here, it is useful to look at how the title of Art. 16 of the IGA Directive is framed. Its English version reads 'buying stock from an existing business' whereas its official Amharic version reads 'ከነባር የንግድ ድርጅት ለክሊየን ስለመግዛት', an expression that is the same as the former. It's uncommon to refer to 'shares' in partnership firms as 'stock' or ለክሊየን. Therefore, unlike the ambiguity of expressions regarding what type of business firm can be set up by a CSO to engage in income-generating activities, the second mode of engagement seems to strongly favour company forms only.

⁹⁹ IGA Directive, Art. 16

¹⁰⁰ Belete (n 10) 22

¹⁰¹ IGA Directive, Art-16/2

¹⁰² Id, Art-16/

¹⁰³ Ibid

3.2.3. Cost Sharing and Collecting Public Contributions as Modes of Engagement

As stated above in Art. 63(1)(b), the CSO Proclamation provides for the establishment of a separate business organization (company), acquiring shares in an existing company, collection of public contributions, and operation as a sole proprietorship as modes of CSOs' engagement in income-generating activities. A literal reading of this provision shows that the mechanisms speculated by the Proclamation are treated similarly. However, the content, organization, and spirit of the IGA Directive that are enacted to implement the Proclamation by regulating the income sources of CSOs show that the modes speculated under Art. 63(1)(b) of the Proclamation are rather treated differently by the IGA Directive. In this regard, Part Two of the IGA Directive (Articles 4–16) that carries the title 'Business Conducted by the Civil Society Organization' governs only when a CSO engages in business activities through the establishment of a business company and buying stock from an existing business. Although the IGA Directive fails to define 'business', it appears to stand for profit-earning activities. On the other hand, the provisions of the IGA Directive governing public contribution are placed under Part III (Articles 17–26), whereas cost sharing is placed under Part IV (Articles 27–30). This organization of the Directive potentially gives a connotation that CSOs engage in profit-earning ventures by utilizing only the first two modes of engagement.¹⁰⁴ This view is supported by the Directive's provisions, which set forth particular requirements for each mode of engagement. Besides, it seems that the prerequisites for obtaining business licenses and registering do not apply to cost sharing and collecting public contributions.

2.2.3.1. Cost Sharing

Sometimes CSOs may engage in commercial endeavors just to recover their expenses. This practice, referred to as "cost-sharing" occurs when CSOs levy fees and levies to recover all or a portion of the expenses incurred in rendering services to their beneficiaries—without making a surplus or profit.¹⁰⁵ These initiatives are particularly crucial for CSOs that work in underprivileged areas where customers cannot afford to pay for their services.¹⁰⁶ In these situations, the wisest course of action is to at the very least demand payment from those who can afford the services.¹⁰⁷

¹⁰⁴ Of course, the Directive has failed to provide specific provisions concerning the use of sole proprietorships to venture into profit-making activities.

¹⁰⁵ CSO Proc Art, 64 (1).

¹⁰⁶ Belete (n 10) 12

¹⁰⁷ Id, p-2

It is imperative to note that this arrangement is not available to all CSOs. It is available only to a CSO that is prohibited, either by its donors or bylaws, from setting up a separate business organization.¹⁰⁸ A CSO that plans to operate this scheme needs to secure permission from the authority.¹⁰⁹ This option allows a CSO to charge a fee for the products or services it offers.¹¹⁰ Yet, there are several pre-conditions that a CSO needs to fulfill, as well as the legal restrictions imposed on a CSO that utilizes this mechanism to raise funds. In the first place, it must prepare an initial document that includes the purpose, the cost-sharing plan and the method used for the cost sharing, the identity of the beneficiaries and their number if possible, the method to identify the beneficiaries, the methods of obtaining free services or goods as gifts or in other ways, the target customers and the reasons, and the sustainability of the program.¹¹¹ Besides, the law provides that the fee paid by the user for the service or the goods must not exceed 25% of the minimum market value of the service or the goods.¹¹² It is also expected of the CSO to submit, along with its annual activity and audited statements, an annual financial statement, the method used to determine the price of the service or item, the number of users who provided or purchased the service or item, the price at which it was sold to users, and the total income and how the income was spent.¹¹³ Non-compliance with the provisions of the IGA Directive entails measures ranging from a warning to an order to dissolve the business.¹¹⁴

3.2.3.2. Collecting Public Contributions

A collection of public donations or contributions, either in cash or in kind, can be conducted in a variety of ways, including planning and organizing events like concerts, bazaars, and exhibitions; placing donation boxes at hotels, malls, and the offices of foreign organizations.¹¹⁵ The task of collection can be done either by a concerned CSO itself or through a commission.¹¹⁶ The primary purpose of a public donation is to collect donations for charitable purposes or the benefit of the general public, and such charitable purposes include medical services, care and support for the

¹⁰⁸ IGA Directive, Art. 28/1

¹⁰⁹ Id, Art-28/2

¹¹⁰ Id, Art 29/1

¹¹¹ Id, Art-28/2

¹¹² Ibid

¹¹³ Id, Art-30

¹¹⁴ Ibid

¹¹⁵ Belete (n 10) 26

¹¹⁶ IGA Directive Arts 25 and 26

disabled, the elderly and children, the incapacitated and the weak, the unemployed, and support for those affected and displaced by natural or man-made disasters.¹¹⁷ Collecting public contributions is limited to raising funds for the objectives specifically listed under the IGA Directive.¹¹⁸ As to the modes of collection of public contributions, any contribution can be collected by post, box or receipt, mobile phone, short message service, bank, or any other method.¹¹⁹

As pointed out above, a CSO that either establishes a subsidiary business organization or purchases shares of existing companies needs to comply with Art. 60(2)(g) of the CSO Proclamation, which mandates that the CSO's internal rules specify whether or not the CSO will engage in income-generating activities via a subsidiary business organization or purchase shares of existing companies. Nevertheless, it is unlikely that holding fundraising activities is subject to an explicit statement in its internal rules.¹²⁰ The only requirement provided for this mode of engagement under the IGA Directive is the obligation to notify ACSO in writing at least 5 days in advance to collect public contributions.¹²¹ However, the Directive does not tell what the authority is expected to do after being notified or the consequences of failure to notify. It is not incorrect to assume that the authority has the power to verify the compliance of the planned publication contribution with the relevant laws and either allow, ban, or modify the planned public collections. Finally, a concerned CSO that has successfully carried out the collection of public donations or contributions has an obligation to submit a report on the public contribution to the authority after its completion.¹²²

3.3. Regulation of Resulting Incomes and Taxation Issues

The other key concerns in the discourse of CSOs' engagement in business activities are how the resulting income should be administered and the tax liability questions. Besides, it is important to note that when a CSO becomes a partner of a partnership organization or shareholder of a

¹¹⁷ Ibid

¹¹⁸ Id, Art-17

¹¹⁹ Id, Art-20

¹²⁰ Belete (n 10) 27. The same writer argues that, first of all, this is included in the optional list; according to Art. 60(1) of the Proclamation, there are required elements that must be included in the internal rules. Furthermore, this is not a requirement to carry out fundraising efforts according to the other pertinent regulations that deal directly with the fundraising difficulties.

¹²¹ Ibid. IGA Directive, Art-18

¹²² IGA Directive Art. 24

company under the RCC or operates a business as a sole trader. This is impliedly subject to the rights and obligations prescribed for traders, partners, and shareholders under the RCC. In other words, for any legal purposes related to their income-generating activities, CSOs will be subject to the relevant tax, commercial registration and business licensing, and investment laws.¹²³ This sub-section provides a brief discussion about the regulation of resulting incomes and the taxation thereof.

3.3.1. Regulation Incomes Generated from Business Activities

As pointed out above, in principle, CSOs in Ethiopia are granted the right to engage in business activities to raise funds for the fulfillment of their objectives.¹²⁴ Nonetheless, there are several legal restrictions on the administration and/or utilization of the incomes earned. These restrictions are rooted in the view that CSOs are not formed principally for profit-making activities. Thus, in principle, profits from the activities of the business organization should be used for the charitable programs of the organization or administrative costs.¹²⁵ Yet, the IGA Directive allows some portion of the profit to be used for the business where it benefits the organization, and a decision to that effect was made by the authorized body.¹²⁶

Also, CSOs are prohibited from distributing profits obtained from business or investment activities to members or employees of the organization.¹²⁷ The CSO law requires the earned income to go to the principal objective(s) for which a CSO was established instead of being distributed to members and/or workers. Nonetheless, the incomes may be distributed to members or employees for payment of ‘legally permitted service fees’ such as employees’ salaries.¹²⁸ The provision fails to explicitly mention founders, officers, or board members of CSOs. However, it can be argued

¹²³ CSO Procl. Art. 64/2. It is important to point out that CSOs engaged in income-generating activities are under obligation to submit their annual performance report and financial statement to the authority in relation to income-generating activities. This report should include the method used to determine the price of the service or item, the number of users who provided or purchased the service or item, the price at which it was sold to users, and the total income and how the income was spent. Besides, CSOs engaged in income-generating activities must keep a separate bank account and track their business expenses separately in compliance with relevant commercial and tax laws. Income-generating activities will be subject to the relevant tax, commercial registration and business licensing, and investment laws. See IGA Directive Art-30, CSO Procl. Arts-64/2 and 64/3.

¹²⁴ CSO Procl Arts (61/4, 63/1/b, and 64/4)

¹²⁵ IGA Directive, Art. 9

¹²⁶ Ibid

¹²⁷ Id Arts: 61/4, 63/1/b, and 64/4

¹²⁸ Id Art-60/1/d

that, owing to the nonprofit nature of CSOs, the non-distribution principle is expected to apply to these individuals as well.¹²⁹ Unless the expression ‘legally permitted service fees’ is clearly defined, there is always the risk that incomes earned from business activities can be indirectly distributed to the leaders of CSOs via the payment of excessive salaries.¹³⁰ This concern is partly addressed by a provision of the CSO Proclamation that mandates that income from income-generating activities should be used to cover administrative and program costs of the organization.¹³¹ Of course, a CSO is not free to spend the earned income for the objective of covering administrative and program costs without limitations.

A CSO established for the benefit of the general public or third parties is prohibited from expending more than twenty percent of its total income on administrative expenses.¹³² The Proclamation clearly defines administrative costs as including, among other things, rent, bank fees, attorney fees, and the salary of administrative staff.¹³³ It excludes expenses for networking, research, and training.¹³⁴ IGA Directive too clearly states that profits from a business established by the organization, whether as dividends or in any other way, should be fully used to cover the program or administrative expenses of the organization.¹³⁵ Yet, it is possible to spend some of the profit for the business by the decision of the body authorized by the relevant law or the by-laws of the business company, which is more beneficial to the organization.¹³⁶ Again, this is in line with the basic principle that CSOs are not meant principally for profit-making ventures. Nonetheless, conditions attached to re-investment of profits earned from engagement via establishing a business organization do not apply to re-investment of profits earned from buying shares of existing businesses.¹³⁷

¹²⁹ Belete (Supra N.10)

¹³⁰ Ibid

¹³¹ Art. 63(2) of the CSO Proclamation considers the salaries and benefits of administrative employees as administrative costs. Previously, Art. 6(1) Income Generating Activities by Charities and Societies Directive No. 7/2011 prohibited incomes generated from business activities to be used to cover administrative costs.

¹³² Id, art-63/2. This 80/20 rule, which states that a CSO may only spend 20% of its revenue on administrative expenses, has replaced the 70/30 rule under the former legislation.

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ IGA Directive Art-9

¹³⁶ Ibid

¹³⁷ Id, Art-16/1

3.3.2. Taxation of Incomes Earned from Business Activities

The CSO Proclamation does not specify which taxes CSOs are required to pay. However, it can be construed from other legislation governing specific aspects of CSOs and the existing tax legislation. Art. 64/3 of the Proclamation states that ‘CSOs may engage in income-generating activities but are subject to laws concerning registration and licensing requirements for activities related to trade, investment, or any profit-making activities.’¹³⁸ This provision, in effect, calls attention to the application of tax laws to incomes earned from the business activities of CSOs. This is about the application of tax laws on major types of taxes, i.e., income tax, VAT, customs duties, turnover tax, etc. Regarding income tax liability, the law makes a clear distinction between the sources of income of CSOs from business activities and incomes from other sources. Thus, CSOs are exempt from income tax for incomes generated from their core functions¹³⁹ and incomes from grants and membership fees.¹⁴⁰ However, CSOs’ income from economic or business activities is subject to the same taxes as income generated by business entities.¹⁴¹ Besides, donations made to CSOs by business organizations or individuals are considered non-deductible expenditures.¹⁴²

CSOs that engage in business activities may also be required to pay value-added tax (VAT) or turnover tax (TOT). However, unlike income tax, VAT and TOT taxation depend on the value of the CSO's annual transactions. The VAT Proclamation requires the business organizations that make transactions of over 500,000 Ethiopian Birr within the scope of one year to register for VAT and collect the VAT from their partners.¹⁴³ This provision accommodates CSOs that engage in income-generating activities earning over 500,000 Ethiopian Birr within the scope of one year. Yet certain supplies of goods and services are exempt from VAT, including the rendering of educational and medical services, among others.¹⁴⁴ On the other hand, unlike VAT, TOT is an

¹³⁸ CSO Procl. Art. 64

¹³⁹ Art. 65/1/m of the Federal Income Tax Proclamation No. 797/2016 It is to be noted that other individuals and business entities enjoy income tax deductibility for their charitable donations made to Ethiopian charities and societies. Yet, the total deduction allowed to the tax payer shall not exceed 10% of the taxable income of the tax payer for the year (Art. 24).

¹⁴⁰ Ibid

¹⁴¹ CSO Procl. Art. 64

¹⁴² Art. 24/1/a Federal Income Tax Proclamation No. 797/2016

¹⁴³ Art. 16/1 Value Added Tax Proclamation

¹⁴⁴ Art. 8(2)(a)-(p) of the VAT Proclamation

indirect tax that applies to business organizations whose annual transactions fall below 500,000.¹⁴⁵ Hence, a CSO may have to pay the TOT when they purchase goods or services from businesses whose annual transactions are less than 500,000 birr.

4. Conclusion

In Ethiopia, ACSO has issued a new directive, the IGA Directive, recognizing the right of CSOs to engage in lawful business and investment activities to raise funds and fulfill their objectives. The directive allows CSOs to establish a separate business organization, acquire shares in existing companies, collect public donations, or operate as sole proprietorships. Although the recognition of CSOs' engagement in income-generating activities to fund their primary objectives is a welcomed development, an analysis of the governing legal regime reveals several shortcomings that could potentially impede the effective implementation of CSOs' right to engage in income-generating activities.

First, Art. 63(1)(b) of the CSO Proclamation, which provides specific modes of engagement by CSOs in a business, suffers from ambiguity. It is unclear if CSOs are permitted to establish company forms alone or all types of business organizations recognized by the RCC. Similarly, the IGA Directive has maintained the same ambiguity concerning the mode of engagement of CSOs in business activities. Despite its attempt to provide some conditions that need to be complied with by CSOs planning to do business forming business organizations, it fails to be precise on the form of the business organizations that can be potentially utilized, especially concerning partnership businesses.

Second, although IGA Directive was expected to provide detailed regulation on how CSOs can utilize a sole proprietorship to engage in income-generating activities, it is lacking in providing detailed provisions on the utilization of sole proprietorship recognized by the CSO Proclamation as one mode of CSOs engagement in commercial activities.

Last, while the IGA Directive has attempted to provide detailed regulations on 'the collection of public contributions and cost-sharing' as modes of generating income, it has failed to provide detailed regulations on key aspects such as the differential treatment of these two modes from the

¹⁴⁵ Art. 4 of the Turnover Tax Proclamation, the turnover tax rate is 2% on goods sold locally; 2% on services rendered by contractors, grain mills, tractors, and combine harvesters; and 10% on other services.

establishment of a subsidiary business organization and the purchase of other business organizations' shares by a CSO.

The author proposes legislative reforms and recommendations to address legal gaps and ambiguities, aiming to mitigate negative impacts on CSOs' income-generating activities.

Primarily, the key legal ambiguities and inadequacies identified above require legislative measures either by the House of Peoples Representatives (HPR) or ACSO. Regarding issues that concern the CSO Proclamation, ACSO should take the initiative to bring these legal ambiguities to the attention of HPR so that the existing legal ambiguities are addressed through the amendment of the existing legislation. The consortium of CSOs, as well, has the potential to bring this issue to the attention of the ACSO. The point of emphasis on the CSO Proclamation should be clear incorporation of a legal provision allowing the CSOs interested in doing business through the establishment of a subsidiary business organization to be able to use all forms of business organizations recognized in the RCC.

In addition, the legislative power to issue or amend the Directive is vested with ACSO to rectify ambiguities and/or inadequacies of the IGA Directive identified above. Concerning the IGA Directive's collection of public contributions and cost-sharing as modes of engagement in business activities, ACSO must initiate amendments to the Directive to provide detailed regulations on the differential treatment of these two modes of engagement. That is from the establishment of a subsidiary business organization and the purchase of other business organizations' shares. Regarding the inadequacy of IGA Directive provisions on how CSOs could utilize a sole proprietorship to engage in income-generating activities, ACSO can rectify it through amendments to the Directive that can either make cross-references to the relevant provisions of the RCC governing sole businesses or by adding detailed provisions to IGA Directive on how CSOs could utilize a sole proprietorship.

Furthermore, concerning the IGA Directive's ambiguity on a form of business organization that can be potentially utilized, especially partnership forms, there are two potential solutions for ACSO to consider. The first and presumably easier option is to amend the provisions of the Directive in a way that makes cross-references to the principal law governing business organizations, i.e., the RCC, instead of trying to prescribe special rules. The second possible option

is to clarify the confusion through future amendments to the relevant provisions of the IGA Directive and prescribe special rules. Here, it is necessary to make sure that these provisions comply with the provisions of the RCC.

Finally, it is imperative to point out future research directions or areas for further study related to the regulation of CSOs in Ethiopia. Future research will focus on the empirical study of the practical implementation of the legal regime governing CSOs' engagement in doing business. Besides, it is equally important to address areas that also possibly affect the potential of CSOs to engage in income-generating activities, especially in the areas of taxation of incomes from business activities. Similarly, it is important to consider regulations that address the practical challenges the CSOs face while trying to secure the necessary licensing and registration to commence the desired income-generating activities, as well as the necessity of balancing the commercial activities with the primary objectives for which CSOs are established.