

The Mandate of Charitable Organizations to Engage in Businesses as Income Generation Activity: Theories, International Experiences and Ethiopian Law

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Abstract

The engagement of charitable organizations in business, as income generating activity, is a contentious subject. Those supporting charity trading see it as a venue of financial support for the missions of charities while others are against this move arguing that charity trading will degrade the defining virtues of charities – namely, that they operate outside of the for-profit marketplace. Theoretically, there are different lines of thought with regards to charity trading such as exclusivity doctrine, the doctrine of primary purpose trading, doctrine of ancillary trading, and the doctrine of non-primary purpose or unrelated trading. Countries adopt one or two of these theories and largely they view income generation activities from different perspectives– its relation with the primary purpose of the charity, asset protection of charities (the risk of business failure), and its effect on market competition. The Organization of Civil Societies Proclamation (OCS) of Ethiopia allows charities to engage in any lawful business activity without a condition of the element of relatedness to the mission of the charity and other concerns. Generally, there are doubts about the legitimacy and extent of engagement of charities in business. This article examines whether and to what extent, charities shall be allowed to engage in business activities. Following doctrinal research methodology, the article critically examined the theories, international practices, empirical evidences and legislations of non-profit organizations. Based on the analysis made the article concludes that as charities are inherently formed to pursue charitable purposes and since business activities as a secondary mission may distract them away from their central missions, their engagement in trade activities shall be limited only to charity purpose-related trading. Thus, the OCS law of Ethiopia needs to be re-visited in light of the foundational theories of the non-profit sector and major international experiences.

Keywords: Third Sector, Non-Profits, Charitable Organization, Organizational Existence, Charitable Purposes, Income generation, Business activity, Ethiopia

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Introduction

Charitable organizations are institutions created to provide public services on a non-profit basis. In the economic platform, they fall under the third sector, working on areas that cannot be done by the government (public sector) and the market (private sector).¹ Hence, there is a longstanding assumption that charitable organizations do not engage, as a mission, in commercial activities, nor do they exist primarily to generate profits.² Yet, nowadays, charities are engaging in trade and investment activities geared towards deriving revenue for “charity purposes.” This move of charities has become a point of contentious among scholars and practitioners in legal and economic policies. Some justify the acts of these institutions arguing that the business activities are meant for realizing the inherent goal of the institutions. Others, on the other hand, challenge their moves taking the view that it is against the virtues of charities and overstep their role in societies.³ Be that as it may, with regards to charity trading, the international practices are also diverse.⁴ While some countries allow charities to engage in business without limits, others permit this act with stricter conditions and requirements.⁵

In Ethiopia, the engagement of charities in trade and investment activities is prevalent.⁶ Currently, the OCS proclamation allows charities to engage in

¹ Olaf Corry, Defining and Theorizing the Third Sector, in R. Taylor (ed.), *Third Sector Research*, DOI 10.1007/978-1-4419-5707-8_2, (2010), p.13, [Hereinafter R. Taylor, *Third Sector Research*].

² Salamon Lester M. and Helmut K. Anheier, The International Classification of Nonprofit Organizations: ICNPO-Revision 1, the Johns Hopkins Institute for Policy Studies, Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, No. 19. (1996), P. 3.

³ Bosscher, Judith L., Commercialization in Nonprofits: Tainted Value? *SPNA Review*: Vol. 5: No. 1, Article 2, (2009), p.8. See also Angela M. Eikenberry and Jodie Drapal Kluver, The Marketization of the Nonprofit Sector: Civil Society at Risk?, *Public Administration Review*, Vol. 64, No. 2, (2004), p.136-138.

⁴ Feasibility Study on a European Foundation Statute Final Report by Max Planck Institute for Comparative and International Private Law, (2009), p.87. See also Comparative highlights of foundation laws, the operating environment for foundations in Europe, (EFC), (2015), available at <https://efc.issuelab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2015.html>[Hereinafter Comparative highlights of foundation laws].

⁵ Ibid. See also the nonprofit laws of different countries at <https://www.cof.org/content/nonprofit-law-> [Last accessed on 11 March 2020]

⁶ For instance, Endowment Fund for the Rehabilitation of Tigray (EFFORT), the Amhara National Regional Rehabilitation and Development Fund (better known as Tiret), the TUMSA Endowment Foundation for the Development of Oromia, and the Southern Regional Development Fund (then known as Wendo) are established pursuant to the Ethiopian Civil Code of 1960 as a charitable endowment. “Under new Charities and Societies legislation which came into force in early 2009, endowment funds such as EFFORT fall under the category of charitable endowment.”(See Sarah Vaughan and Mesfin Gebremichael Rethinking business and politics in Ethiopia The role of EFFORT, the Endowment Fund for the Rehabilitation of Tigray Research Report, the Africa Power and Politics Programme (APPP) Research Report series, (2011)), p.36, [Hereinafter Sarah and Mesfin.] The Memorandum of association of TIRET, for example, confirms this fact (See TIRET Corporate

business activities without a condition of purpose related business test.⁷ And practically, some charities are overstepping their role and becoming increasingly like private firms.⁸ As a result, especially the engagement of charitable endowments — a form of charitable organization with political and other forms of affiliations — in business has become commonly the topic of political debate and research in this country. Accordingly, there are concerns about the legitimacy of trading by Charities operating in Ethiopia.

A couple of studies explored the features and operations of non-profit organizations in Ethiopia, yet much of these studies did not examine the legitimacy of the realistic operations of charities in the socio-economy of the country from the perspective of the organizational existence (paradigms) of the non-profits. As a way to fill this gap, this article investigated whether and to what extent charities shall be allowed to engage in business activities in Ethiopia. Based on the evidences from the investigation, the author recommends the business model to charities operating in Ethiopia, considering the foundational existence of charities, international practices, and the potential implications of the commercialization of charities. Finally, it is important to note that, as the issues related to charity trading are mostly raised in connection with charitable organizations, in terms of scope, this article aims at examining only cases of charitable organizations.

To achieve its ends, the article analyzes different books, journal articles, and non-profit laws of selected states dealing with the theoretical underpinnings and the international experiences regarding the engagement of charities in business

Establishment Memorandum of Association, May 19, 2006 E.C, the preamble). Also, Tiret endowment is registered by the Amhara National Regional State Bureau of Administration and Security Affairs, the then responsible organ to regulate charities, as charitable organization;(See Mamenie Endale, Some Legal Controversies Regarding Party-affiliated Endowments and Their Participation in Business Activities: The Case of EFFORT and TIRET Endowments, *Bahir Dar University Journal of Law* Vol .9, No.1, 2018, p. 80.) However, these endowments are engaged in different trade and investment activities. See also Toni Weis, Vanguard Capitalism: Party, State, and Market in the EPRDF's Ethiopia, Doctoral thesis, University of Oxford, (2015). See also Befeqadu Hailu, Special to Addis Standard, Analysis: Inside the Controversial EFFORT, available at <http://addisstandard.com/analysis-inside-controversial-effort/> published on 16 January, 2017). Charities, operating in Addis Ababa, are also engaged in different business activities as an income generation activity (see Tesfaye Wegari, Perception of Selected Stakeholders on the Role of NGOs in Local Development: The Case Study of Kirkos Sub-City in Addis Ababa, Master's thesis, Addis Ababa university, (2015), p.47.

⁷ See Organizations of Civil Societies Proclamation, Proclamation No. 1113/2019, *federal Negarit Gazette*, (2019), Article 63 [Hereinafter the OCS Proclamation].

⁸ In this regard, if we see the case of EFFORT and Tiret, though, they are charitable organizations, practically, they are known by their trade and investment activities rather than charitable activities. Some researchers express EFFORT is a conglomerate of businesses. They are, highly, engaged in the market in different sectors. The list of Companies of EFFORT available at: <https://ecadforum.com/2017/07/01/the-effort-conglomerate-monopoly-in-ethiopia/>. The lists of companies of TIRET available at: <http://www.tiret.et/SitePages/Home.aspx>).

activities. For the examination of the international experiences, the author reviewed the experiences of countries having different laws and models regarding charity trading. Accordingly, for each category of systems of charity trading, states are selected based on the availability of legal and reference documents. Meanwhile, the author has tried to incorporate countries from the developed and developing world.

To examine the situations of charitable organizations and in the attempt to propose approaches of charity trading, particularly in Ethiopia, the article analyzes the relevant laws, and review reports, research works and magazines written on issues relating to charitable organizations operating in the country.

These sets of themes in the article are organized under six sections. Section one characterizes the notion of non-profit organizations generally and charitable organizations particularly. Section two examines the organizational existence of charitable organizations in selected states and societies. Section three investigates the mandate of charities to engage in business activities under varying socio-economic and legal environments. In this section, the theories and international practices are examined comparatively. Section four presents a brief overview of charitable organizations under the Ethiopian legal system. As an extension to this, Section five explains the mandate of the charities to engage in business activities. Finally, the paper makes concluding remarks and forwards recommendations.

1. The Notions and Organizational Existences of Charitable Organizations

1.1. The Notions of Charitable Organizations: Overview

Nonprofit organizations⁹ widely referred to as the “*third sector*” with government and its agencies of public administration being the first, and the sphere of business or commerce being the second.¹⁰ As such, the popular definition of the third sector usually covers all types of organizations formed as grass root initiatives that are separate from the state (are neither financed by the state, nor are the state structures), and which are not created to maximize profits

⁹ The terms nonprofit describes the entity's purpose that, by origin, a non-profit is operating outside of the for-profit marketplace. Besides, it indicates that the organization is barred from distributing its funds or net earnings, if any, to individuals who exercise control over it, such as members, officers, directors, or trustees. (See Tuula Mitilä, Commercialization of Non-Profit Organizations’, the 19th Annual IMP Conference in Lugano, (2003), p.4. available at: <https://www.researchgate.net/publication/266213552>

¹⁰ Helmut K. Anheier, Nonprofit organizations: theory, management, policy, ISBN 0-203-50092-X Master e-book ISBN (2005), p. 4.

(as opposed to for-profit entities like companies).¹¹ Thus, the non-profit universe is large and diverse, encompassing those organized for some "public benefit" and those that are organized for some "mutual benefit of their members."¹² In European states, the third sector is largely known by the name foundation and association.¹³

One of such forms of non-profit foundations is charitable organizations.¹⁴ As a nonprofit organization, the primary objectives of charitable organizations are philanthropy and social well-being (e.g. educational, religious or other activities serving the public interest or common good).¹⁵ The legal definition of a charitable organization (and of charity) varies across countries and contexts of regulations.¹⁶ While countries define the institution in different ways, one can observe shared features of practice in their establishment and operations. For example, as a widely shared practice, an organization can be registered as a charity if its purposes are exclusively charitable and it is for the benefit of the public. Principally, charitable organizations are established by persons with volunteer time and charitable contributions.¹⁷ Accordingly, a charitable organization must dedicate all of its resources to charitable activities (including related income generation activities) which it carries on as an institutional end.¹⁸ In view of that, largely, countries require charities to pursue only public-benefit purposes tailored to that end.¹⁹ In more practical terms, non-profit generally and

¹¹ Magdalena Popowska and Michał Łuński, *Third Sector Characteristics and Importance*, (2014), p. 32, available at <https://www.researchgate.net/publication/>. (Last accessed on 14 March 2019) Indeed, coming to terms with the diversity and richness of organizations located between the market and the state, understanding the set of institutions is challenging. In expressing the sector plenty of profusion of terms such as: "nonprofit sector," "charities," "third sector," "independent sector," "voluntary sector," "tax-exempt sector," "nongovernmental organizations," "associational sector," "philanthropy," are used. Perhaps the most certain and straightforward system for defining the nonprofit sector is the one provided in a country's laws and regulations.

¹² Barbara Bucholtz, *Doing Well by Doing Good and Vice Versa: Self-Sustaining NGO/Nonprofit Organizations*, *Journal of Law & Policy*, Vol. 17, (2009), p. 410.

¹³ Douglas Rutzen et al, *The Legal Framework for Not-for-Profit Organizations in Central and Eastern Europe*, *the International Journal of Not-for-Profit Law*, Vol. 11, No 2, (2009), p. 4. See also Comparative highlights of foundation laws, *supra* note 4, p. 51. Public Foundations are included in charities realm (See at <https://www.cof.org/foundation-type/public-foundations>). Associations are membership-based organizations that are formed to the mutual interest of members.

¹⁴ R. Taylor, *Third Sector Research*, *supra* note 1.

¹⁵ Reiling, Herman T., *Federal Taxation: What is a Charitable Organization?* *American Bar Association Journal*, 44 (6), (1958), pp. 525–598, available at [JSTOR 25720402](https://www.jstor.org/stable/25720402)

¹⁶ *Ibid.*

¹⁷ John O'hagan and Markpurdy, *The Theory of Non-Profit Organizations: An Application to a Performing Arts Enterprise*, *The Economic and social Review*, Vol. 24, No. 2, (1993), PP. 155-167

¹⁸ Tamara Larre, *Allowing Charities to "Do More [Good]" through Carrying on Unrelated Businesses*, *Canadian Journal of Nonprofit and Social Economy Research*, Vol. 7, No 1, (2016), p 31.

¹⁹ For example, if we see the charity laws of the Czech Republic, France, Hungary, Ireland, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, the United Kingdom Zimbabwe,

charitable organizations in particular have traditionally taken on the responsibility of providing basic human services to the disenfranchised and vulnerable segments of society.²⁰

Drawing on the duties of these institutions and their place in the socio-economic sphere, scholars and policy practitioners identified the defining characteristics for such institutions. First, charitable organizations are institutionally separate from the government hence sometimes, as a form of non-profits; they are also called non-governmental organizations, structurally separate from the instrumentalities of government.²¹ This does not mean, however, that they may not receive significant government support. For example, non-profits may receive supports from the government while performing public services.²²

Turning to their mission, one can observe that they are established for the benefit of the public. To be a charity, an organization must pursue a charitable mission as its dominant and overriding purpose.²³ As ascribed by scholars in the relevant discourse, the mere stipulation of the purpose under statutory documents does not make the organization a charity.²⁴ The organization needs to have practical purposes that are ‘wholly and exclusively charitable’ and the organization operates for the benefit of the public.²⁵

The third defining feature of charities is that no individual or group is allowed to benefit from the deposit and proceeds of the charitable organization (non-distribution constraint).²⁶ The income or fund of the charitable organizations will not be distributed to volunteers, managers or boards working in the organization. Moreover, the proceeds obtained from the sale of related activities must be plowed back into the basic mission of the charity.

The fourth important characteristic of charities is concerned with their origination. Because the initiative for the establishment of a charitable

Ethiopia, Zambia, Tanzania, etc., having a public benefit purpose is a requirement for establishing a charitable organization.

²⁰ Habibe İLHAN, Non-Profit Organizations as Providers of Public Goods, *Yönetim ve Ekonomi* 20/1 (2013), pp. 95-104, available at <https://www.researchgate.net/publication/304147172> (Last Accessed on March 24, 2020)

²¹ Helmut, *supra* note 10, p. 48.

²² And sometimes, government officials may also sit on their boards. What is prohibited rather is that being served as an instrumentality of any unit of government and that it therefore does not exercise governmental authority.

²³ Brakman Reiser, D, Charity law’s essentials. *Notre Dame Law Review*, 86, (2011), p. 2.

²⁴ Community Southwark, Charities and Trusts, available at <https://www.communitysouthwark.org/charities-and-trusts/>, [Last accessed on 23 April 2020]

²⁵ *Ibid.*

²⁶ Helmut, *supra* note 10, p. 48.

organization originates from volunteers; they are characteristically established with a meaningful degree of voluntary participation. In this sense, voluntarism manifests in two ways. First, the organization must engage volunteers in its operations and management, whether on the composition of its board members or through the use of volunteer staff and voluntary contributions. Second, *voluntary* also connotes the *non-compulsory* nature of the actions of the members.”²⁷ The last feature worth considering in the characterization of charities is institutional character. To be regarded as a charitable organization, there must be an institutional structure at all levels.²⁸ Hence, from small charity committee to big charitable organizations, all the charities have a certain institutional element such as name, management structure, rulings, regular meetings, and some degree of organizational permanence.

Finally, it is important to note that, while these elements are taken as inherent institutional characters, charities may be established in different forms such as philanthropy²⁹, charitable trust, charitable endowment, charitable committee, or charitable society. Although the naming and presumably the focus of service for each of these forms varies, their goal remains the same – addressing civic and economic problems which the government or the market cannot access or afford to do so.

1.2. Organizational Existence of Non-profits: Theoretical Foundations

As the scholarly literatures shows, contemporary socio-economic platform is a composition of tripartite of sectoral divisions: the public (government) sector, the private (business or market) sector, and the not-for-profit sector (nonprofit or nongovernmental organizations). The three sectors are different in terms of their institutional ends and focus. Explaining this fact, Drucker states:

.... non-profit organizations do something very different from either business or government. Business supplies either goods or services. Government controls. A business discharges its task when the customer buys the product, pays for it, and is satisfied with it. Government discharges its function when its politics are effective. The “non-profit” institution neither supplies goods or services nor controls. Its “product”

²⁷ Id, p. 49.

²⁸ Id, p. 47.

²⁹ It is “private initiatives, for public, common good, focusing on quality of life”. This combines the social and scientific aspect of philanthropy, developed in the 20th century, with its original humanistic tradition.

*is neither a pair of shoes nor an effective regulation. Its product is a changed human being.*³⁰

From the remarks of the writer, one could observe that the nonprofit organizations have a distinct, yet complementary mission with the government and market sector. By occupying the space between the for-profit sector and the government, they place themselves at equilibrium point for both sectors and hence can serve as arbiters of both government and business.³¹ As such, they are required to fill the third space, where needs have not been met because the private sector has not seen it as profitable and the public sector has either neglected these needs or not been able to afford to address them. Therefore, the non-profit sector defines a set of organizations and activities next to the institutional complexes of government, state, or public sector, on the one hand, and the for-profit or business sector, on the other.³²

Hence, the engagement of nonprofit organizations in social welfare policy finds its roots in companion theories of government failure and market failure. For a better understanding of the notion of public failure and market failure, it is important to examine the theory underlying the organizational existence of non-profits. The theory which justifies the existence of non-profits for the reason of public failure is known as the public goods theory. According to this theory, the basic rationale for the existence or formation of the nonprofit organizations is to provide public goods of undersupply.³³ Thus, they are inherently established in response to governmental undersupply of public goods³⁴ or unsatisfied demand for public and quasi-public goods.³⁵

Accordingly, the provisions of public goods by charities are basically financed by voluntary contributions from/and for individuals dissatisfied with the prevailing level of state provision.³⁶ Historically, it is perceived that “failures of

³⁰ Peter F. Drucker, *Managing the Non-Profit Organization: Principles and Practices*. NY: HarperCollins Publishers., (1992), p. xiv, available at <https://www.harpercollins.com/9780062034755/managing-the-non-profit-organization/>(Last accessed on 17 March 2019)

³¹ Popowska and Luński, *supra* note 11, p.40.

³² Helmut, *supra* note 10, p. 4.

³³ O'hagan and Markpurdy, *supra* note 17, PP. 155-167.

³⁴ It must be noted that, every kind of public good is not open for the non-profit organizations. Thus, while it is said public failure, it is for the undersupply of non-pure public goods (public roads, bridges, environmental protection, public health centers, etc). Pure public goods are only done by the government.

³⁵ Burton Weisbrod, the advocator of public goods theory, states that “under satisfied demand for collective type goods is a governmental “failure” analogous to private market failures” With this statement he introduces the non-profit sector as a potential corrective measure for market failure.

³⁶ O'hagan and Markpurdy, *supra* note 17, PP. 155-167.

state-led development approaches throughout the 1970s and 1980s fueled interest in non-profits as a development alternative, offering innovative and people-centered approaches to service delivery, advocacy and empowerment.”³⁷ However, no specific historical period is indicated as to when public failure occurred as a driving force for the formation of nonprofits’. As can be inferred from the premises of public goods theory, the meaning of government failure is the inability of the government to provide collective goods.³⁸ So, public failure could vary depending on the level of development of the country. In developing countries, the extent and type of government failure would be wider and hence requires an immense involvement of the non-profits in the socio-economy of the state. Yet, in developed economies, this gap on the part of the government is relatively low and local nonprofits show limited involvement in filling the gaps of government failure. Rather, they stretch their hands to fill the socio-economic gap prevailing in developing economies riddled with varying forms of government failure.

Now we turn to the other theory that justifies the intervention of non-profits for market failure reasons. This theory, widely known as the trust-related theory, holds that non-profits organizations are generally established as a “means to react to marketplace failures by filling economic void with volunteer time and charitable contributions.”³⁹ A closer look into the tenets of this theory show that the development of non-profits is associated with information problems inherent in the goods or services provided and the trust dilemma.⁴⁰ Particularly, the non-profits exist because the demand for trust goods in market situations are not met by private firms.⁴¹ The trade activities and processes of trust-related goods typically entail a conflict of interest between a seller and buyers. This is because, under conditions of information asymmetry, consumers are at a disadvantage and subject to profiteering by profit-seeking firms.⁴²

³⁷ Nicola Banks and David Hulme, the role of NGOs and civil society in development and poverty reduction, Brooks World Poverty Institute ISBN: 978-1-907247-70-5, BWPI Working Paper 171, (2012), p.3.

³⁸ İlhan, *supra* note 20, p. 98.

³⁹ *Id.*, p. 97.

⁴⁰ This theory perceived that the market lacked a trustworthy partner and a non-profit organization was a more credible producer of goods / services to the consumer.

⁴¹ O’hagan and Markpurdy, *supra* note 17.

⁴² Commonly information asymmetry would occur in the three scenarios that require the involvement of the non-profits for the provision of the goods and services. Firstly, the character of some goods and services, such as peculiar medical care, are not suitable to be appreciated by ordinary persons. Second, the real consumer of the goods and service might not be capable to judge the quality of the product. For example, in the child care service, children cannot evaluate the daycare services provided for them. Thirdly, sometimes, the consumer might not be the person who purchased the services and might not be able to transmit information about the service to the buyer. For example, since the parents do not

Thus, according to the trust related theory, as a solution to this trust dilemma and information asymmetry problems, the non-profit institutions are uniquely placed to provide such trust goods and services. As such, they can resolve this conflict as they are not motivated by profit and therefore are less likely to downgrade their products to maximize profits.⁴³ For example, in the US, health care, daycare, and other unaffordable social services are mainly provided by the non-profits, evidencing the substantial impact of the non-profits over profit-seeking enterprises in supplying trust goods.⁴⁴

Generally, from the underlying tenets of these theories, it can be understood that the non-profits are primarily established for public benefit. Yet, one should not forget that charities, like any other organization, ultimately must cover the full economic costs of all their operations and they need to have financial sources for this end.⁴⁵ The next sections explore such possible source of revenue of charitable organizations.

2. Source of Revenues of Charitable Organizations: Overview

As part of their existence, charities commonly need to have certain amount of asset/fund to be registered legally.⁴⁶ In essence, they need to have their own “funding model” to carry out charitable activities, and as a source of finance, they combine different funding sources. These sources are the “funding model” of the non-profit sectors as taxation is the main source of revenue for the government and sales are for the private sector.⁴⁷ The conventional sources of funds of non-profits are funded through donations, in the forms of contributions, gifts, or grants.⁴⁸ One of such contributions, which charities largely rely on, is the goodwill of individuals channeled through grants and donations.⁴⁹ Besides, the government provides payments through different ways such as grants and

consume the service themselves, they cannot judge the exact quality of the care provided for children. In all the cases illustrated above, if the providers are the for-profit organizations the consumers will be affected as the for-profits organizations will abuse the service for their favor.

⁴³ Helmut, *supra* note 10.

⁴⁴ Helmut K. Anheier and Jeremy Kendall, Trust and voluntary organizations: Three theoretical approaches, Civil Society Working Paper 5, (2000), p. 4.

⁴⁵ Stacey Y. Abrams, Devolution's Discord: Resolving Operational Dissonance with the UBIT Exemption, *Yale L. & Pol'y Rev.*, Vol 17, (1998), p.884.

⁴⁶ See comparative highlights of foundation laws, *supra* note 4, p. 8 &17.

⁴⁷ Burton A. Weisbrod, To Profit or Not to Profit: The Commercial Transformation of the Nonprofit Sector, The nonprofit mission and its financing: Growing links between nonprofits and the rest of the economy, in Burton A. Weisbrod eds, To Profit or Not to Profit: The Commercial Transformation of the Nonprofit Sector, Cambridge University Press, (1998), p.13.

⁴⁸ Ian Murray, Charitable fundraising through commercial activities: The final word or a pyrrhic victory? *Journal of Australian Taxation*, Vol. 11, (2008), pp. 138–207.

⁴⁹ *Ibid.*

statutory transfers (contributions by the government, as mandated by law, to provide general support to an organization in carrying out its public programs).

Still, another source of income for these organizations is program service revenue, which includes income earned from fees and charges generated through the pursuit of an organization's primary purposes.⁵⁰ For example, universities rely on tuition, and child and family service agencies generate fees and utilize it for service. In addition, in most jurisdictions, active and passive "fundraising activities" are main sources of revenue. Active fundraising such as obtaining money from 'the sale of any disc, badge, token, flower or other device for any charitable purpose' accepted in some contexts as common sources.⁵¹ Still other forms such as the proceeds from selling tickets to any 'entertainment or function' (for example a sporting event, or bazaar) are also passive fundraising modalities of charities.⁵²

Through time, these modalities and other business activities have developed into sources of income for charities. Yet, at the same time, such engagement in commerce is considered by some people as a method of shifting the financial dependence of charities from charitable donations to commercial sales activity.⁵³ Thus, while there is consensus on the fact that charities need to have "income generation activity" arrangements the extent and the model of the business activities for charities are subjects of contention. In the coming sections, this article examines the theories and international experience as to whether and to what extent charities are allowed to engage in business activities.

3. The Mandate of Charitable Organizations to Engage in Business activities: Models and International Experiences

As highlighted in last section, there is a broad consensus on both sides of the argument that charitable organizations shall be permitted to engage in "income-generation" activities as it would contribute to attain the institutional ends of the organizations.⁵⁴ Yet the cogency and extent of engagement of charities in business as a money-making venture is less established. As a result, there are practical as well as theoretical concerns on charity trading. Those who adhere to

⁵⁰ Example sources of program service revenue include school tuition, admissions costs to museums and concerts, royalties from educational publications, and registration fees for conferences or conventions.

⁵¹ Murray, *supra* note 48, pp.138–207.

⁵² *Ibid.*

⁵³ Brittany Fritsch *et al*, An Examination of the Tension Between Business and Social Mission Within Social Enterprises, Carleton Centre for Community Innovation, WP # 13-07 (2014), p.2.

⁵⁴ Legal Regulation of Economic Activities of Civil Society Organizations Policy paper, cutting-edge expertise in law affecting civil society, European Center for Not-for-Profit Law, (2015), p. 3.

the liberal approach of charity trading see opportunity, new energy and creativity, independence and sustainability in these moves of charities in business activities. In contrast, those who object to unrestricted trading argue that “attention to market forces, signified by changing reliance on earned income, will alter one of the defining characteristics of charities —namely, that they operate largely outside of the for-profit marketplace.”⁵⁵ The next subsections further explore the mandate of charities to engage in the market as an income generating activity from the theories and international experiences perspectives.

3.1. Models and International Experiences

3.1.1. Exclusivity Doctrine

The argument in support of exclusive doctrine is founded on the premises that charitable organizations must exclusively pursue the charitable purposes for which they were organized and chartered.⁵⁶ In other words, as charities exist to perform activities that cannot be done by the public and private sector, they shall only ensure activities for which they are established. Thus, charities may not engage in trade as a reason of income generation and the resources of the charity shall not be spent on business activities to generate income.⁵⁷ Instead, the non-profits must retain their resources or spend excess funds on their charitable purposes. Charities may perform activities in the market sector with a motive of filling market failure. Nevertheless, charities must trade carefully to address the expectations of both government and business.⁵⁸

3.1.2. The Doctrine of Primary Purpose Trading

The underlying assumption of this theory is that “non-profit organizations are driven by the mission, not by the profit.”⁵⁹ As such, charities shall only engage in a primary purpose trading,⁶⁰ which contributes directly to one or more of the objects of a charity as set out in its governing document.”⁶¹ For example, if the primary object of a charity is to provide education it can charge fees for

⁵⁵ Judith, *supra* note 3, p. 8.

⁵⁶ Bucholtz, *supra* note 12, p. 412.

⁵⁷ *Ibid.*

⁵⁸ Weiting Zheng *et al*, Non-Profit Organizations as a Nexus between Government and Business: Evidence from Chinese Charities, (2018), p. 4, available at: <https://www.researchgate.net/publication/> [Last accessed on 17 March 2019]

⁵⁹ Macfarlanes LLP, charities and trading – a complicated business, (2015), p.1. available at: <https://www.macfarlanes.com/what-we-think/in-depth/2015/> [lasted accessed on July 13/2020]

⁶⁰ Guidance for charity Commission for England and Wales, trustees, trading and tax: how charities may lawfully trade, (2016), p.4.

providing an educational related service. Thus, this type of trading will normally, in any case, be carried on in *the course of carrying out the primary purpose*⁶² of the charity.⁶³ According to this doctrine, the business shall be a means of performing one or more of the charity's main objects (as stated in its governing document) and hence carried out as part⁶⁴ of the charity's primary mission.⁶⁵ In other word, according to the primary purpose trading doctrine, charities are not allowed to carry out business with the main or sole aim of raising funds for a charity.⁶⁶ Further, primary purpose trade should be carried on by the charity itself rather than being hived down.⁶⁷ The work in connection with the trading is mainly carried out by beneficiaries of the charity, as that will normally be primary purpose trading.⁶⁸ Compatibly, this doctrine holds that the trade activities do not require the implementation of additional governance procedures.⁶⁹

Mostly, in this scheme, as long as the commercial activity is related to the primary purpose, separate registration and subsidiary entity for the trading activities are not required; because the trade itself is considered as part and parcel of the primary purpose activity. In the primary purpose trading, the character and mission of charities sharply limit their ability to circumvent the "substantially related test. To qualify as a related activity, states require a substantial causal relationship between an activity and an organization's "primary purposes." A causal relationship exists only if the activity can be directly traced to the primary purposes (other than through the production of funds).⁷⁰ Thus, the policy or statutory design of the charitable purpose is an important factor to limit the extent of involvement of charities in business. Typically, considering the frameworks of policy designs of the respective

⁶¹ Id., p. 9.

⁶² 'Primary purpose trading' is a kind of trading that is directly referable to the charitable purpose. For example, provision of educational services by a school or college in return for course affordable fees, holding of an exhibition by an art gallery or museum in return for admission fees, sale of tickets for a theatrical production staged by a theatre.

⁶³ Guidance for charity Commission, *supra* note 60, p. 4.

⁶⁴ In stating the 'relatedness' limitation; states use different wordings, while the intention is similar, such as "...closely connected to the main purpose, related to the main purpose, necessary to achieve the purpose, consistent with the charity established..."

⁶⁵ Pesh Framjee, Charities and trading – time for a rethink, (2019), p. 1, available at: www.crowe.co.uk. [last accessed on 17 March 2019]

⁶⁶ Guidance for charity Commission for England and Wales, *supra* note 60, p.4.

⁶⁷ Macfarlanes, *supra* note 59.

⁶⁸ Guidance for charity Commission for England and Wales, *supra* note 60, p. 9.

⁶⁹ Community Southwark, Implication of Charity Trading, (2016), p.1; available at <https://communitysouthwark.org/sites/> [last accessed on May 23/2019]

⁷⁰ Suzanne Ross McDowell and Steptoe & Johnson LLP, Unrelated Business Income Tax, a Leadership Summit, N.W. Washington, D.C., (2008), p.4.

country, charities put their primary purpose in their governing document. The doctrine of primary purpose trading is followed in many countries. For instance, the Russian Federation⁷¹, England & Wales⁷², Australia⁷³, and Serbia⁷⁴, Ukraine⁷⁵, Poland⁷⁶, Malta⁷⁷, Croatia⁷⁸, Lithuania⁷⁹ Philippines⁸⁰ Sweden⁸¹, Kosovo⁸², Portugal⁸³, Slovenia⁸⁴, Indonesia⁸⁵ etc., are among the countries that adopt a primary purpose trading.

3.1.3. Ancillary Trading Model

This theory holds that charitable organizations can engage in ancillary trading which is complementary (or ancillary) to a charity's primary purpose. An ancillary trade is not, in itself, a means of performing the charity's objects, but is carried out in the course of performing those objects, and as an adjunct to the performance of those objects.⁸⁶ In this sense, the business activities are characteristically 'inevitable concomitant' or 'mere incident' of the charitable

⁷¹ The Civil Code of The Russian Federation, Parts One, Two, Three and Four. see also Federal Laws No. 52-FZ , 1994, No. 15-FZ, 1996, No. 147-FZ, (2001) and No. 231-FZ , 2006 Article 50(4), available at <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru083en.pdf> [Last accessed 10 June 2019]

⁷² Charities Acts (1992) and the Charities Act 2016, see at <https://www.cof.org/content/nonprofit-law-england-wales> [Last accessed on 20 March 2019]

⁷³ The Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act), available at: <https://www.cof.org/content/nonprofit-law-australia>. [Last accessed on 17 March 2019].

⁷⁴ Decree on endowments and foundations, *Official Gazette* Of The RS, no. 88/2010, Article 45 <https://www.cof.org/content/nonprofit-law-serbia> [Last accessed on 17 March 2019].

⁷⁵ Law Of Ukraine on public-benefit charities, no. 5073-vi, (2012), Article 16(4), Available at: <https://www.refworld.org/docid/5d667a354.html> [accessed 14 June 2020].

⁷⁶ Law on Public Benefit Activity and Volunteerism (PBA Law), Art 20(4): available at: <https://www.cof.org/content/nonprofit-law-poland> [Last accessed on 17 March 2019]

⁷⁷ Comparative highlights of foundation laws, *supra* note 4. P. 23.

⁷⁸ Nonprofit Law in Croatia, Law on Foundations, *Official Gazette* No. 106/2018, Article 34. Available at: <https://www.cof.org/content/nonprofit-law-croatia> [last accessed on 17 March 2019].

⁷⁹ Law of Charity and Sponsorship Foundations, No.1-172, (1993) Art 4(3). Available at <http://images.policy.mofcom.gov.cn/flaw/201411/2F91A511-EC02-442C-A9F7-14A28CDC241D.pdf> [last accessed on 17 March 2019]

⁸⁰ Revised Corporation Code of the Philippines (RA 11232), (2019) (repealing the Corporation Code of the Philippines (Batas Pambansa Bilang 68)), Section 86, see at <https://www.cof.org/content/nonprofit-law-philippines> [last accessed on 15 March 2019]

⁸¹ Comparative highlights of foundation laws, *supra* note 4, P. 23- 24.

⁸² Ibid

⁸³ Ibid

⁸⁴ See Foundations Act, *Official Gazette* of the Republic of Slovenia Nos. 70/05 and 91/05, Art 2. available at: <https://www.cof.org/country-notes/slovenia> [last accessed on 23 March 2019].

⁸⁵ Nonprofit Law in Indonesia, Law No. 16 of 2001 on Foundations (Yayasan), (2001), Article 7. Available at: <https://www.cof.org/content/nonprofit-law-indonesia>.

⁸⁶ Macfarlanes, *supra* note 59, p.1. 'ancillary trading' is a kind of trading that is not directly referable to the central mission of the charity. Nevertheless, it is part of doing what the charity does. An example of ancillary trading is the sale of drink by a theatre to audience members. Although the sale of drink does not fulfill the charitable purposes of a theatre charity, it will contribute indirectly by making sure that the audience feel welcome and enjoy the theatrical experience. It follows that the sale of drink to passers-by who do not attend the production does not contribute directly or indirectly to the purposes of the charity, and therefore cannot be classed as primary purpose trading or ancillary trading.

purpose.⁸⁷ Thus, an ancillary trade is one that by itself would not be a primary purpose trade but one that a charity would be expected to or obliged to carry out as part of carrying out its primary purpose.⁸⁸ For example, sale of brochures promoting a charity fundraising event can be exercised in the course of carrying out the primary purpose because it contributes indirectly to carrying out charity's primary purpose.⁸⁹ Accordingly, it is clear that purposes or activities may be characterized as ancillary or incidental to a charitable purpose where they do not have a direct effect on the mission.⁹⁰ In this realm, South Africa⁹¹, Finland⁹² Bulgaria⁹³, Romania⁹⁴, Albania⁹⁵, Hungary, Latvia, Italy, and Austria can be mentioned as typical examples with this experience.⁹⁶

3.1.4. Non-Primary Purpose Trading or Secondary Purpose

This model asserts that charities shall be permitted to carry on non-primary purpose trading in order to raise funds.⁹⁷ The business activity neither in itself furthers the charity's objects nor auxiliary (ancillary) to the achievement of the purpose of the charity. It includes business activities conducted solely to generate income for charities. However, largely, charity laws require that the non-primary trading does not involve a significant risk to the assets of the charity.

States that can be mentioned under this model are France⁹⁸, Venezuela,⁹⁹ Slovakia¹⁰⁰, Germany¹⁰¹, Denmark¹⁰², Kenya¹⁰³, Montenegro¹⁰⁴, etc. These

⁸⁷ Murry, *supra* note 48, p. 167.

⁸⁸ Framjee, *supra* note 65, p. 1.

⁸⁹ Community Southwark, *supra* note 69, p.3.

⁹⁰ Murry, *supra* note 49, p. 169.

⁹¹ Non-Profit Organizations' Act 71 of 1997 (as amended) ("NPO Act") and Companies Act of 2008 and Companies Amendment Act of 2011, Schedule 1 Para. 2(a)). Non-profits may carry on any business, trade, or undertaking ancillary to its stated objectives, i.e., the promotion of the public benefit or one or more cultural or social activities, or communal or group interests; see at <https://www.cof.org/country-notes/nonprofit-law-south-africa> (last accessed on 9 April 2020)

⁹² Comparative highlights of foundation laws, *supra* note 4. P. 23.

⁹³ *Ibid*

⁹⁴ Governmental Ordinance 26/2000, amended by Law 246/2005 and Fiscal Code, Law 227/2015, Article 13-15. Charities may directly carry out economic activities that have an "accessory character" and are closely connected to the main purpose of the organization; see at <https://www.cof.org/content/nonprofit-law-romania> (last accessed on 8 May 2020)

⁹⁵ Law No. 8788, Dated May 7, 2001, On Non-Profit Organizations, the Assembly of the Republic Of Albania, (2001), Article 36. Available At: https://www.imolin.org/doc/amlid/Albania_Law%20No.%208788%20On%20Non-Profit%20Organizations.pdf [Accessed on 10 May 2020]

⁹⁶ Comparative highlights of foundation laws, *supra* note 4, p. 23-24.

⁹⁷ Community Southwark, *supra* note 69, p.3.

⁹⁸ Law No. 2003-709 of August 1, 2003 on Philanthropy, Associations, and Foundations. available at: <https://www.cof.org/content/nonprofit-law-france> (last accessed on 5 May 2020).

Countries recognize a non-primary trading, however, strictly regulate the trade activities from perspectives of the unfair competition¹⁰⁵, tax exemption¹⁰⁶, adverse effect on the primary mission.¹⁰⁷ Also, they require the proceeds from the trades to be plowed in the organization's main statutory activities.¹⁰⁸

As a condition, some states require charities to set up a trading subsidiary¹⁰⁹ to raise funds through an unrelated business activity. Accordingly, in these states, if charities wish to make unrelated business activities, the business must be carried out by a non-charitable trading subsidiary ("hived down") rather than being carried on by the charity itself.¹¹⁰ Largely, charities are only permitted to undertake substantial trading that is directly connected to their charitable purpose, while all unrelated economic activities may only be conducted through a specially established legal entity or a subsidiary.¹¹¹ These subsidiary companies are consequently treated in the same way as any other business entity.¹¹² In this category, for example, Bosnia and Herzegovina¹¹³, Czech¹¹⁴, Turkey¹¹⁵ Romania¹¹⁶ China¹¹⁷ and Belarus¹¹⁸ can be mentioned.

⁹⁹ Código Civil (CC) (Civil Code) (1982), see Council on Foundations: Nonprofit Law in Venezuela, available at <https://www.cof.org/content/nonprofit-law-venezuela> (last accessed on 5 May 2020).

¹⁰⁰ Act No. 213/1997 on Non-Profit Organizations Providing Generally Beneficial Services, Section 30(1) and (2)), The National Council of the Slovak Republic, available at: <https://www.cof.org/content/nonprofit-law-slovakia> (last accessed on 12 May 2020).

¹⁰¹ German Federal Civil Code (Bürgerliches Gesetzbuch, or BGB), Chapters II (Foundations, Sections 80-88) and Fiscal Code of 1976, as amended, Article 65. (last accessed on 5 May 2020), see also European Center for Not-for Profit Law, Legal Regulation of Economic Activities of Civil Society Organizations Policy paper, cutting-edge expertise in law affecting civil society, European Center for Not-for-Profit Law, (2015), p. 8.

¹⁰² Comparative Highlights of Foundation Laws, *supra* note 4, P. 23.

¹⁰³ The Public Benefit Organizations Act, 2013, Section 65(1)). See at <https://www.cof.org/content/nonprofit-law-kenya> (last accessed on 9 May 2020).

¹⁰⁴ Law of Non-Governmental Organizations 2011; (amended in 2017), "Official Gazette of Montenegro, Article 29, available at: <https://www.cof.org/country-notes/montenegro> (last accessed on 9 May 2020). However, the business activities to be performed have to be envisaged by the organization's statute, registered with the Registry of Commercial Entities, and all profits are invested in the organization's main statutory activities.

¹⁰⁵ In this regard France can be mentioned, European Center for Not-for-Profit Law, *supra* note 101.

¹⁰⁶ In this regard Germany can be mentioned, European Center for Not-for-Profit Law, *supra* note 101. See also the experience of other countries at <https://www.cof.org/country-notes/nonprofit-law-ireland>.

¹⁰⁷ In this regard Slovakia can be mentioned. Act No. 213/1997 on Non-Profit Organizations Providing Generally Beneficial Services, Section 30(1) and (2)), The National Council of the Slovak Republic, see at <https://www.cof.org/content/nonprofit-law-slovakia> (last accessed on 12 May 2020).

¹⁰⁸ See the non-profit laws of different countries at <https://www.cof.org/content/nonprofit-law->

¹⁰⁹ Any non-charitable trading company owned by a charity or charities to carry on a trade on behalf of the charity (or charities).

¹¹⁰ Macfarlanes, *supra* note 59, p. 1.

¹¹¹ Framjee, *supra* note 65, p.4.

¹¹² *Id.*, p. 3.

Generally, pertaining to the mandate of charitable organizations to take part in business activities, the international experience can be summarized in to two categories. The first category of experience shows that countries which permit the direct engagement of charities in any kind of economic activity without limit (non-primary business mode) so long as the profit return is to be used for the primary purpose. In this category, however, some countries require charities to establish subsidiaries to carry out non primary trade activities. Countries with the second category of experience, on the other hand, allow the direct engagement of charities under certain conditions (related or ancillary to the primary purpose trading). Looking into the global experience, one can see that, though all of the models have a comparable number of followers, almost all states have strictly prohibited charities from engaging in the trade activity that affects their primary purposes. Bearing the effect of a non-primary purpose trading on charitable missions, countries allow it with strict conditions, showing their suspicion to the model.

In choosing an optimum business model, different elements need to be considered. Basically, the foundational or organizational existence of charities has to be the uppermost determinant element. Under the guise of income generation, the non-profits shall not cross their natural sphere either directly or indirectly. Thus, as Gallagher states, “Charities must walk a careful line, balancing their commitment to their missions against the need for revenue streams that are adequate to the task.”¹¹⁹ Generally, the broad policy justification for the existence of charities reveals that an unlimited engagement of charities in business activities negates the basics for the establishment of charities in societies. Therefore, among the models, primary trading is a widely

¹¹³ Federation of Bosnia and Herzegovina Law on Associations and Foundations, (2002), Article 4. See at https://www.legislationline.org/download/id/4643/file/BiH_law_associations_foundations_2002_en.pdf (last accessed on 19 April 2020)

¹¹⁴ The Civil Code of the Czech-republic, Act No. 89/2012 as amended, available at : https://www.cof.org/content/nonprofit-law-czech-republic#Applicable_Laws (last accessed on 20 April 2020)

¹¹⁵ European Center for Not-for-Profit Law, *supra* note 101, p.12.

¹¹⁶ See Ordinance 26 on Associations and Foundations, *official gazette*, # 39 of 31, (2000), Art 47; Available at https://mk0rofi1fqa2w3u89nud.kinstacdn.com/wpcontent/uploads/Romania_ordinanceeng.pdf?last accessed on 9 May 2020

¹¹⁷ The "Charity Law of the People's Republic of China", Chairman's Order 12th Congress No. 4, 2016, Article 9. Available at: <https://www.chinalawtranslate.com/en/2016-charity-law/> [Last accessed 9 October 2020]

¹¹⁸ Comparative highlights of foundation laws, *supra* note 4, P. 23-24.

¹¹⁹ Gallagher, J. G., *Peddling products: The need to limit commercial behavior by nonprofit organizations. Competing Visions: The Nonprofit Sector in the Twenty-first Century*, Washington, DC: The Aspen Institute, (1997), p. 6.

recommended model to balance the sphere of charities and income generation activities.

4. Charitable Organizations in Ethiopia: An Overview

According to Jeffrey Clark, in Ethiopia, modern civil society organizations commenced in the 1930s following the advent of urbanization and economic development.¹²⁰ However, the legal framework for the regulation of civil society organizations was enacted and codified in 1960.¹²¹ In terms of coverage, the operation of charities was very limited during the imperial period.¹²² In the Derg regime too, charities were mainly regulated by the Civil Code. However, during the same period, the non-profits had no freedom to operate in the country and hence the sector was underdeveloped.¹²³ Compared to the Derg regime, after the TPLF/EPRDF¹²⁴ took power, the operation of civil society organizations has also been highly bridled.¹²⁵ Yet, the FDRE government had been using the Civil Code until 2009 to regulate these organizations. By 2009, the government issued a new Proclamation of Charities and Societies.¹²⁶ This Proclamation was critically challenged by local and international organizations as it contains rules that hamper the operation of non-profit organizations. As a result, this law had been repealed by the new OCS proclamation.

The OCS proclamation divides organizations of civil societies into “Local Organization” and Foreign Organization.”¹²⁷ Under this Proclamation, the “organizations of civil societies” are defined as a non-governmental, non-partisan, not for profit entity voluntarily established at least by two or more persons and registered to carry out any lawful purpose.¹²⁸ The forms of the organizations include non-government organizations, professional associations,

¹²⁰ Jeffrey Clark, *Civil Society, NGOs, and Development in Ethiopia: A Snapshot View*. A document prepared by the NGO and Civil Society Unit of the World Bank’s Social Development Department, Washington, DC: The World Bank. (2000), P. 4.

¹²¹ Book I, Title III, of the Civil Code is the relevant part to govern the Civil Society Organizations. See the Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, *Negarit Gazeta*, (1960), (Hereinafter the Civil Code of Ethiopia)

¹²² Dagne Negash, *An Assessment of Challenges and Opportunities of Ethiopian Charities*, Master Thesis, Addis Ababa University, (2017), p. 9.

¹²³ Getachew Tegegn, *Assessment of Income Generation Practices and Challenges among NGOs operating in Addis Ababa: The case of Kolfé Keranyo and Lideta Sub-cities*, MA thesis, St. Mary’s University, (2017), p.11.

¹²⁴ TPLF= Tigray People Liberation Front, EPRDF= Ethiopian peoples’ revolutionary democratic front.

¹²⁵ Ayele Angelo Ago, *The Roles, Contributions and Challenges of NGOs in Ethiopia*, MA Thesis, University of Reading, (2008), P. XXXVII.

¹²⁶ Charities and Societies Proclamation No. 621/2009, *Federal Negarit Gazeta*, (2009). [Hereinafter Charities and Societies Proclamation].

¹²⁷ See the OCS Proclamation, Article 2.

¹²⁸ *Ibid*, Article 2 (1).

mass based societies and consortiums.¹²⁹ As described under the definition, organizations of civil societies are membership organizations. Thus, membership is the basic element in the formation of civil society organizations.¹³⁰ The Proclamation aimed to govern both charitable organizations and professional associations.¹³¹ Local organizations are broadly categorized into charitable organizations, board-led organizations and associations.¹³² Charitable organizations, as a civil society organization, are created by the membership of persons and can be formed in different arrangements. Accordingly, the law recognizes different forms of charitable organizations, such as a charitable endowment¹³³; a charitable trust;¹³⁴ and a charitable committee.¹³⁵

As stated under the Proclamation, “charitable organization” is solely established to work for the interest of the general public or third party.¹³⁶ In other words, charitable organizations are, exclusively, established for charitable purposes. As can be understood from the international experience, countries define and set out the activities of the charities under policies and civil society laws.¹³⁷ However, the law in Ethiopia neither defines charitable purposes nor specifies charitable activities in the existing context. In Ethiopia, the sources of revenue of charities are diverse depending on the type of charity. As discussed above, historically, the majorities of charitable organizations in Ethiopia focused on emergency relief operations and were largely foreign charities which had heavily relied on

¹²⁹ Ibid.

¹³⁰ Id, Article 2.

¹³¹ In terms of scope, as stated under article 3(3), the proclamation shall be applicable to; Organizations operating in two or more regional states, Foreign Organizations, Organizations established in Ethiopia to work on International, regional or sub regional issues or not operate abroad, Organizations operating in two Chartered city (Addis Ababa and Dire Dawa), charitable Organizations established by religious Organizations. Also, the proclamation excludes some activities which are beyond the scope of application of the Proclamation. Accordingly, Religious institutions except charitable organizations established by religious institutions, traditional institutions (Ekub, Edir and others) and Organizations formed under other laws are out of the scope of application of the Proclamation. Yet, Regional state governments have also their own non-profit laws.

¹³² Id, Article 18.

¹³³ A “Charitable Endowment” is an organization by which a certain property is perpetually and irrevocably destined by donation, money or will for a purpose that is solely Charitable. (See OCS Proclamation, Article 21(1)).

¹³⁴ “Charitable Trust” is an Organization established by an instrument by which specific property is constituted solely for a charitable purpose to be administered by persons, the trustees, in accordance with the instructions given by the instrument constituting the charitable trust (See OCS Proclamation, Article 31(1))

¹³⁵ A “Charitable Committee” is a collection of five or more persons who have come together with the intent of soliciting money or other property from the public for purposes that are Charitable (See OCS Proclamation, Article 48)

¹³⁶ See The OCS Proclamation, Article 2(4).

¹³⁷ See the non-profits laws of countries at <https://www.cof.org/content/nonprofit-law>

foreign aid.¹³⁸ A small number of local charities were financing themselves through private donations, public collection and membership contributions.¹³⁹ However, charitable organizations working on human rights secure their full or substantial part of the budget from foreign sources.¹⁴⁰ Currently, charitable organizations generate their funds from private contributions, government grants, donor consortium, income generation activities (public shows, volunteer service, fundraising dinner and media calls) and commercial activities.¹⁴¹

5. The Mandate of Charities to Engage in Business Under the OCS Proclamation of Ethiopia

Concerning the mandate of charities to take part in business, the path of Ethiopia is unstable. As stated before, although non-profits have been started their operation in Ethiopia in the 1930s, the formal regulatory framework for non-profits was enacted and codified in 1960 under the Civil Code.¹⁴² Thus, the Civil Code represented the start of a regulatory framework for the non-profit sector. However, while these institutions are expected to use up their funds *per se* for the not-for-profit activities, the Civil Code is silent with regards to the engagement of non-profits into economic activities. This was so until 2009.

In 2009, the government enacted Charities and Societies Proclamation No. 621/2009 which strictly regulate the resources and economic activities of charities and societies. This Proclamation represented the start of a regulatory framework containing an express provision on the income generation activities of the non-profit sectors. According to Article 103(1) of the Proclamation, “the Charities or Societies may, upon written approval of the Agency, engage in income-generating activities that are *incidental to the achievement of their purposes...*” [Emphasis added]. Incidental in a sense that the economic activity may not have a connection with the aim of the charity rather it is a kind of activity which is conducted in the course of the primary activity incidentally.¹⁴³

¹³⁸ Clark, *supra* note 120, P. 4.

¹³⁹ Yntiso Gebre, Reality Checks: The State of Civil Society Organizations in Ethiopia, *African Sociological Review*, Vol. 211, (2017), p.36.

¹⁴⁰ Abiy Chelkeba, Impact Assessment of the Charities and Societies Law on the Growth and Programs of Non-Governmental Organizations (A Survey Study of Addis Ababa City Administration, Addis Ababa, Ethiopia), Master of Laws (LL.M), Addis Ababa University, (2011), p. 27.

¹⁴¹ Tesfaye, *supra* note 6, p. 47.

¹⁴² Clark, *supra* note 120, P. 4.

¹⁴³ But, the Amharic version of the provision looks lucid and conveys a different message. The Amharic version enshrines that an endowment can conduct economic activities which are related/connected to the purpose of the charity “...ከሌላው ጋር ተያያዥኝነት ያላቸውን...”). The trade and investment activities must be related to the purpose of the non-profit organization. The trade/investment shall be in itself as

Currently, the applicable law is the OCS proclamation No. 1113/2019. This proclamation has, among others, come up with a new form of business model in the income generation activities of the non-profits. Pursuant to Article 63(1)(b) of the Proclamation, “the Charities and associations have the right to engage in *any lawful business and investment activity* in accordance with the relevant trade and investment laws to raise funds for the fulfillment of its objectives” [italics added]. Yet, this wider position of the law triggers different concerns. Thus, it is important to appraise the unrestricted trading model of the Ethiopian proclamation from the perspective of the organizational existence of charitable organizations, the model of charity trading, international practices and other dependable concerns.

5.1. Appraising the Charity Business Model of the OCS Proclamation of Ethiopia: A Critical Analysis

As charities operating in developing countries have financial shortages to pursue their charity mission, designing means of income generation activity arrangements is imperative. This, in turn, necessitates countries to design charity trading models in light of the paradigms for the organizational existence of charities. In the coming sections, the article examines the charity trading model of Ethiopia in light of the theories for the organizational existence of charities, international experiences, and from the viewpoint of the potential concerns behind an unrestricted business activity of charities. An unrestricted business engagement of charities is characteristically against the organizational existence of charities. The charity sector is “viewed as one of value and voice for those in need, but the trend of commercialism is resulting in questioning such virtues for the sector and its role in the community.”¹⁴⁴ Hence, unless states duly regulate the economic activities of charities, freewheeling business activity may threaten the integrity of the charities sector.¹⁴⁵

Principally, a charitable organization benefits the public within recognized charitable activities, especially for vulnerable groups or other purposes that benefit the community.¹⁴⁶ A business sector, on the other hand, is a segment that

a means for the realization of the aim of the organization. Hence, as per the Amharic version (which is the controlling version in the Federal government laws); before 2019, Ethiopia had followed the primary purpose related model realm as there is a relatedness limitation to engage in business activities. The income generation guidelines also state the direct relatedness requirement. See Directive on Income Generating Activities by Charities and Societies, CHSA, Directive No. 7/2011. (Amharic, unpublished), Article 5.

¹⁴⁴ Bosscher, *supra* note 3, p.1.

¹⁴⁵ Bucholtz, *supra* note 12, p.404.

¹⁴⁶ İLHAN, *supra* note 20, pp. 95-104.

trades goods and services to consumers. By origin, non-profits are not created to make business either directly, or through companies. As a solution to market failure or as income generation activity, charities shall perform their activities within the spaces and tracks for which they are established. Nevertheless, in this respect, one may wonder about the finance of charities for the provision of their services in society. As it is established in the previous sections, charities, unquestionably, need to have finance for their services. Also; as can be inferred from the notion and formation of charities, there are accepted sources or coffers of finance for charitable activities. As such, charities are formed either through an endowment asset or voluntary contribution (regularly and irregular) or different grants.¹⁴⁷ Therefore, it must be understood that, as a source of revenue, charities shall mainly rely on ‘charity funding models’ such as donations and contributions.

Yet, under the guise of a source of income, charities shall not leave their setting and get into the commercial sector in an unrestricted manner. As the history of charities shows, as a source of revenue, arrangements of income generations are allowed exceptionally.¹⁴⁸ It is presumed that voluntary sectors are mainly financed by voluntary contributions, as tax is the main source for the government and sales for the private sector.¹⁴⁹ Yet, allowing charities to involve in the market in an unrestricted way would make charities an actor in the private sector. In effect, they will begin to perform activities that are naturally not supposed to do by charities and turn themselves into profit making organizations.

Studies exploring such concerns reveal that in Ethiopia, charitable endowments are involved in areas that can be filled by the private sector.¹⁵⁰ According to the researchers, the organizations gain the impetus from the industry policy of the country which clearly opens this space. The researchers rationalized that in some segments of business, the operation of charities cannot be justified by a market

¹⁴⁷ Tilesik, A.; Marquis, C. Punctuated Generosity: How Mega-events and Natural Disasters Affect Corporate Philanthropy in U.S. Communities, *Administrative Science Quarterly*, (2013), 58 (1), PP. 111-148.

¹⁴⁸ Jams W. Woosm, Investment Practices of Endowments and Pension Funds, (2015), P.163. Available At: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2517&context=lcp> [last accessed on 17 March 2019]. Moreover, it is possible to infer from the Civil Code that, for example, charities are mainly expected to carry out their charitable purpose through property *destined for* that purpose. (See The Civil Code of Ethiopia, Book I, Title III).

¹⁴⁹ Burton A. Weisbrod, The nonprofit mission and its financing: Growing links between nonprofits and the rest of the economy, in Burton A. Weisbrod eds, *To Profit or Not to Profit: The Commercial Transformation of the Nonprofit Sector*, Cambridge University Press, (1998), p.13.

¹⁵⁰ Altenburg Tilman, Industrial Policy in Ethiopia, German Development Institute Discussion Paper 2/, (2010), p. 2

failure.¹⁵¹ As a result, the charities are losing their track and become business enterprises bearing the name of charity, though.

Further, owing to the wide-ranging engagement of charities in business, they are losing their charitable missions and focused their stratagem on business. Let alone in the unrestricted trading model, at the time Ethiopia had adopted a related and ancillary trading model, many charities were engaged in the business widely to the extent of characterized as a commercial enterprise.¹⁵² Also, sometimes, business-oriented charities tend to justify their wide-ranging engagement in business activities with non-charitable activities such as job creation and to regulate and influence the market capitalists. Yet, it is important to note that it is not the spirit of the law in permitting charities to engage in business activities.¹⁵³

To mention one of the worst scenario in this instance, some charitable endowments are known, in public, by their business rather than by their charitable activities.¹⁵⁴ They are kinds of organizations that do not engage in "real" charity; their apparent charitable activity is simply a cynical marketing gimmick. Besides, they leave aside the limits and rationale of trading set for charities and they often re-invested the profits "to grow the business or increase market share, which can give rise to questions as to where the altruism and public benefit really lies."¹⁵⁵

Moreover, as can be learned from foreign experiences, unrestricted charity trading entails disadvantages stemming from the management, control and cultural clashes between the two different activities - charitable and profit-making.¹⁵⁶ In effect, the administrators of charity organizations would be

¹⁵¹ Sarah and Mesfin, *supra* note 6, p. 61. If we take the case of TIRET and EFFORT, both of them are working on business areas which can be done by the private sector.

¹⁵² Belete Addis, *Income Tax Privileges of Charities and Charity Giving in Ethiopia: A Critical Legal Analysis*, LLM Thesis, Bahir Dar University, (2018), (Unpublished), p. 62.

¹⁵³ *Ibid.* See also Sarah and Mesfin, *supra* note 6, p. 32, In fact, governments sometimes use enterprises to regulate and influence the private sector. But this is not the task of non-profits. This is rather the role of public enterprises.

¹⁵⁴ As an example, EFFORT and TIRET can be mentioned. As these charitable endowments are operating business in different sector, the general public know them by their commercial character (See *supra* note 8), See also All African.com, Ethiopia: Party Affiliated Businesses Continue to Create Unfair Competition, Forum, (2002), Available at <https://allafrica.com/stories/200211080664.html> [Accessed on 10 March 2020] [Hereinafter, All African.com.].

¹⁵⁵ Belete, *supra* note 152, p. 63.

¹⁵⁶ Redochre, *Charity Trading* (2009), available at: https://redochre.org.uk/wp-content/uploads/2012/03/SE-Charity_trading_pdf.(last accessed on 9 April 2020)

involved in a mix of conventional selfishness and a kind of directed altruism.¹⁵⁷ Hence, entering into business may cause decision-makers to lose sight of the charity's mission and begin to focus on profits. In this regard, Kluvert, one of the scholars exploring the issue, expresses his concern saying:¹⁵⁸

Nonprofit organizations have a pivotal role in mobilizing public attention to social problems and needs, serving as conduits for free expression and social change. However, these activities are significantly challenged in a marketized environment. The nonprofit sector's increased reliance on commercial revenue has caused a shift from services targeted to the poor to those able to pay. Additionally [...] nonprofits that market-oriented organizations have shifted their focus from public goods such as research, teaching, advocacy, and serving the poor, to meeting individual client demands.

Consistent with the remarks of this scholar, other studies have revealed that in cases where charities are extensively engaged in the market, “the stakeholders who were once donors or members become consumers or clients, and the focus of the organization shifts from creating networks of trust to creating opportunities for selling more products or services to individuals.”¹⁵⁹ In the same way, in Ethiopia, as empirical evidences reveal, some charities view their business activities as inseparable part of their missions.¹⁶⁰ In effect, the attention for charitable activities is diminishing. Because of the development of business orientation in the charity sector, charities trailed in the provision of essential services (e.g., education, health care, etc.) are selling their service with commercial prices to non-target groups.¹⁶¹ Therefore, to maintain the sphere and focus of charities, limiting the extent of involvement of charities in business is very important. This is because the moment charities take part in unrelated trade activity, the extent of escaping from their natural sphere (the third space) will be wider.¹⁶² Though the prohibition on the distribution of surplus has been viewed as a safeguard against straying from the mission, prohibitions of unrestricted commercial engagements have been viewed as an important protective measure.¹⁶³

¹⁵⁷ Anup Malani & Eric Posner, The Case for For-Profit Charities, *Virginia Law Review*, Vol. 93, (2017), p. 2032.

¹⁵⁸ Eikenberry and Kluvert, *supra* note 4, p.138.

¹⁵⁹ *Id.*, P.137.

¹⁶⁰ Belete, *supra* note 152.

¹⁶¹ Getachew, *supra* note 123, p.37.

¹⁶² Larre, *supra* note 18, p. 36.

¹⁶³ *Ibid.*

Looking into the third area of concern in this respect, researches have confirmed that unrestricted charity trading in Ethiopia obstructed the market competition system of the country.¹⁶⁴ Particularly, it has been reported that the more charities are permitted to carry on unrestricted business, the impact they impose on the state of competition would be wider. Though charities are operating in the same relevant market with for-profit firms in the country, the former are operating in the market unfairly. In practice, they are perceived to have received preferential treatment, for example, in credit access, government contracts, foreign exchange allocation.¹⁶⁵ This is done not only in their charitable capacity but also in their trader capacity. In this regard, there is a long-standing complaint by the private sector that the subsidiary companies of charities are favorably treated by the government in different arrangements such as privilege to access auctions, and loans and other regulatory benefits.¹⁶⁶ As a result, the decent private sector cannot compete with the charity enterprises as the playing field is not level.¹⁶⁷

At this juncture, it is worth mentioning the case of party-affiliated charitable endowments as illustrative instances of such concerns. As empirical evidences from many studies revealed, in Ethiopia, party-affiliated charities are seriously affecting the commercial sector.¹⁶⁸ According to researchers, extensive commercial engagements of their subsidiary commercial entities in profitable areas compel the private business to compete unfairly with favored charities.¹⁶⁹ There are practical situations, chiefly, connected to charitable endowments such as EFFORT that can raise clear concerns relating to domestic market dominance and acts of abuse of such market dominance.¹⁷⁰ Apart from the empirical evidences, practitioners and representatives of the business community such as members of the Addis Ababa Chamber of Commerce (AACC) have expressed their concern over the unfair competition practice of charitable endowment companies.¹⁷¹

¹⁶⁴ Belete, *supra* note 152, pp.61-65. See also Mulu Gebreeyesus Industrial policy and development in Ethiopia: Evolution and present experimentation Working Paper No. 6, P. 25, available at: <https://www.brookings.edu/wp-content/uploads/2016/07/L2C>.

¹⁶⁵ *Ibid*, Mulu.

¹⁶⁶ All African.com, *supra* note 154.

¹⁶⁷ *Ibid*.

¹⁶⁸ *Ibid*. See also Berihun Gezehegn, the unregulated status of corporate groups and competition issues in Ethiopia: Abuse of market dominance and anticompetitive agreements, Master thesis, Addis Ababa university, (2014), p.109

¹⁶⁹ Sarah and Mesfin, *supra* note 6, p. 61

¹⁷⁰ Berihun, *supra* note 168, p.109, See also welkait.com, Tired (ጥጊት), available at <https://welkait.com/?p=14184> [last accessed on 13 April 2020]

¹⁷¹ All African.com, *supra* note 154.

The fourth concern, with regards to charity trading, is related to the risk of business failure leading charities to financial loss.¹⁷² Although it is a less commonly identified concern, fiscal responsibility is a basic principle in the operation of charitable organization.¹⁷³ Among others, charities are required to take appropriate measures to reduce the risk of using assets for non-charitable purposes.¹⁷⁴ These actions of reducing or avoiding such risks may take different forms. For example, a restriction on carrying on business may provide some assurance to donors that their money will not be “wasted” on a failed business. Also, charities need to foresee how a money loss through a business (for example, a primary purpose trading) would erode resource of the charity and reduce societal benefits produced by the charity. Accordingly, they need to find safeguard against such risks. To this end, in many jurisdictions, charitable organizations purchase charity insurance to protect organization’s property, possessions, money and reputation.¹⁷⁵

Therefore, allowing charities to carry out any business may result in business failure of charities. However, if charities are operating in primary purpose trading, the possibility of their failure is lesser as it will be carried out allied to the charitable activities and largely depends on the lifecycle of the organizations. If the risks are safeguarded, the danger will be entirely avoided. In Ethiopia, the gravest risk to this, unlike other countries, the OCS proclamation permits charities to engage in ‘non-primary purpose trading’ without putting “the absence of a significant risk test.”

Fifth, the marketization activities of charities reduce their social network with core constituencies, such as donors, community volunteers, and other non-profit organizations.¹⁷⁶ Maintaining and safeguarding the relationship of charities with the communities is fundamental principle that charities need to realize to deliver effective programs in the society.¹⁷⁷ The scholarly literature in this respect shows that high reliance of charities on business profits will flagging the social networks, social trust and cooperation of the society towards nonprofit

¹⁷² Larre, *supra* note 18, p. 36

¹⁷³ Principles of International Charity, developed by the Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors, (2005), p.3, available at <http://wings.issuelab.org/resources/13943/13943.pdf> [hereinafter Principles of international charity]

¹⁷⁴ *Ibid*

¹⁷⁵ Hiscox, Insurance, Charities and social enterprises, (2017), available at <https://www.hiscox.co.uk/business-blog/whats-difference-charity-non-profit/> [last accessed on 12 March 2020]

¹⁷⁶ Eikenberry and Kluver, *supra* note 3, p. 137.

¹⁷⁷ Principles of International Charity, *supra* note 173, P. 3.

organizations.¹⁷⁸ Given their voluntary character charities give to society the opportunity to organize itself to promote social values and civic goals is very high.¹⁷⁹ Further, these social networks are essential for mobilizing collective action and addressing social problems.¹⁸⁰ However, when charities rely on commercial revenue and entrepreneurial strategies, there is less space to build networks among constituencies, hence discouraging cooperation and civic participation.¹⁸¹

Looking into the situation in Ethiopia, the level of relation between the society and charities vary depending on fundraising modalities. Charities which collect money through different events from the volunteers are very close to the society.¹⁸² In such cases, the community concerned for charities and the charities also care for the community. Conversely, charities that are extensively engaged in market are not close to the society.¹⁸³ In Ethiopia, the gravest risk to this relationship such as association with a political position and stand-in as a commercial enterprise are affecting the relationship of the society and charities.

Despite all these deficiencies evident in the system, the nonprofit laws use the phrase “income generation” in regulating economic activities of charitable activities.¹⁸⁴ As can be inferred from the phrase “income generation activities”, the fact that the type of trade is allied to the charitable activity is presumable. Normally, income generation activity is a means of source of income for charities through charging fee, income-producing shares and telethons.¹⁸⁵ In other words, disparate business activities are not foreseen under the notion of income generation activity. Besides, as income generation activities do not require the implementation of additional governance procedures in the charity organization, supposedly, the income generation activities need to be allied to the purpose of the charity.¹⁸⁶ Hence, under the pretext of income generation, charities shall not transgress into the market sector.

¹⁷⁸ Eikenberry and Kluver, *supra* note 3, p. 137.

¹⁷⁹ Popowska and Łuński, *supra* note 11, P. 40.

¹⁸⁰ Backman Elaine V. and Steven Rathgeb Smith, Healthy Organizations, Unhealthy Communities? Nonprofit Management and Leadership 10(4), (2000), p. 356.

¹⁸¹ Eikenberry and Kluver, *supra* note 3, p. 137.

¹⁸² In this regard, Muday and Macedonia charitable organizations can be mentioned as an example.

¹⁸³ Befeqadu, *supra* note 6.

¹⁸⁴ See the non-profits laws of different countries at <https://www.cof.org/content/nonprofit-law-> [last accessed on 9 June 2020]

¹⁸⁵ The Cambridge Business English Dictionary, Cambridge University Press, (2020), available at: <https://dictionary.cambridge.org/dictionary/English/income-generating> [last accessed on 9 April 2020]

¹⁸⁶ Community Southwark, *supra* note 69, p.1.

Moreover, permitting charities to engage in any business with the mere condition of the plow back of the proceeds to the primary purpose of charities cannot be a remedy to the glitches emanating from the unrestricted engagement of charities in trade and investment activities.¹⁸⁷

5.2. Towards Designing Charity Trading Model

Looking back the analysis made on the international experience and the theories underlying the origination, existence and operation of charities, one would agree that the commercialization orientation of charities, as a primary activity, has to be sidestepped. In other words, allowing charities to involve in the market in an unrestricted way would make them actors of the private sector. Therefore, at any rate, it has to be known that charities need to perform within their natural sphere. Besides, the involvement of charities in the market on the basis of market failure is often associated with non-financial marketing objectives; they market for social change, which is referred to as a 'societal orientation.'¹⁸⁸

Further, trading as a source of revenue shall not compromise the inherent role of charities. If charities have to involve in income generation activities, they shall be allowed to engage in trade activities which can be performed in the course of carrying out the primary purpose of the charity. In other words, the trading activities must 'bear a coherent relationship to the purposes sought to be achieved', or substantially connected to a furtherance of those purposes'. This is because the more charities take part in unrelated trade activity; the extent of escaping from their natural sphere (the third space) would be wider.¹⁸⁹

Thus, bridling the income generation activities is important. In this regard, the appropriate trading models for the charity sector, including for those in Ethiopia, are the purpose-related trading models. Under these models, charities can generate income while keeping their natural sphere. To this end, primary purpose trading is the most appropriate charity trading model. While a primary-purpose model is commendable, permitting charities to engage in ancillary trading is also helpful for countries like Ethiopia where the support of the private sector is insignificant. Particularly, the incidental trading in an ancillary business would contribute to the promotion of the charity missions while preventing charities from transgressing into the market sector. So, without prejudice to the above propositions, as far as active businesses are concerned

¹⁸⁷ Larre, *supra* note 18, p 36.

¹⁸⁸ Liao *etal*, Market versus societal orientation in the nonprofit context. *Int J Nonprofit Volunt Sect Mark* 6(3), (2001), pp. 254–268.

¹⁸⁹ Larre, *supra* note 18, p. 36.

charities shall only be allowed to take part in primary purpose and ancillary trading.

At this juncture, it is important to note that, as a prerequisite to making charities behave properly, their specific charitable purposes, which the country desires to pursue, have to be defined clearly within policy formulations and non-profit laws. Particularly, the defined space should be delineated in a way it shapes both the charitable purpose and the extent of charity trading. In cases where the primary mission of the charity is not definite, sorting a certain activity as a related or unrelated is difficult. Hence, as a part of formulation of charity trading, a clear delimitation of the natural spaces of the charities sector is critical. In Ethiopia, there have been attempts to define charitable areas since the emergence of such institutions in the country.¹⁹⁰ While this attempt starts in the early days, it is significantly visible in the repealed Charity and Societies Proclamation which defines the space of charities by illustrating activities that shall be deemed as a charitable purpose.¹⁹¹ Surprisingly enough, under the current OSC Proclamation however, areas considered as charitable purposes are not explicitly illustrated, requiring the government, at the regional and federal levels, to explicitly define areas of the third sector generally and charities in particular. Another missing element in the legislation is a specific business model that balances the involvement of charities in business activities and proper operation to attain their inherent goals.

To this end, the government may allow certain forms of income generation activities, such as passive investments which pose no risk to an entity's charitable purpose. For example, a charitable entity may 'passively' invest funds by purchasing assets such as bond or shares to generate income for its activities. Of course, concerning passive income, the number of shares that charities hold should be limited. Unless the level of their capital participation is limited, they will become *de facto* owner of the commercial organizations.¹⁹² So, there is a need to maintain a balance between the level of their capital participation and the smooth functioning of charities in their sphere.

¹⁹⁰ Dessalegn Rahmato *et al*, CSOs/NGOs in Ethiopia Partners in Development and Good Governance, A Report Prepared for the Ad Hoc CSO/NGO Task Force, (2008), P. 16.

¹⁹¹ Charities and Societies Proclamation, Article 14(2). The relief of poverty, the improvement of animal welfare, advancement of human and democracy right, the promotion of conflict resolutions and reconciliation, the advancement of culture, education, and health are some examples of charitable purposes.

¹⁹² In addition to take the focus of charities from charity activities, an extensive engagement in the passive investment will make charities as the operator of the market.

Furthermore, as recent research evidence reveals, most charitable endowments in Ethiopia use the proceeds of the business to start another business while it was expected to use it for charitable purposes.¹⁹³ Therefore, there has to be a maximum threshold on the extent of the reinvestment of trade proceeds that charities shall be allowed for. Unless there is a threshold limit in the reinvestment of passive income, the proceeds would not be plowed back to the charitable purposes to the required level.

Conclusion

The literature and the international experience explored so far establish the view that, as part of the third sector, charitable organizations shall work on areas that cannot be done by the government (public sector) and the market (private sector). Also, income generation is unavoidable phenomenon in the operation of charitable organizations. While charity trading as an income generation is part of the operation of these organizations, the global experience varies largely falling in two categories. In the first category, countries allowing charity trading under certain conditions (related or ancillary to the primary purpose trading). The second category of experience shows countries allow charities to do any lawful business including a non-primary business. In this category, however, some countries require charities to establish subsidiaries to carry out non primary trade activities. Cognizant of the effect of a non-primary purpose trading on charitable missions, these countries allow it with strict conditions, which show their suspicion to the model.

Turning to the Ethiopian experience, though it may appear premature to judge the success or setback of the new Civil Society regime, the noticeable limitations have already been observed. To be specific, charities are permitted to engage in any lawful income generation activities under the current legislation on charitable organizations.¹⁹⁴ Let alone in an unrestricted trading model, at the time Ethiopia adopted a related and ancillary trading model, many charities were engaged in the business widely to the extent of looking like a commercial enterprise. As a result, some of the charities are losing their charity mission and take their commercial activity as their central objective instead of using the business as a means to generate income for charitable purposes.

Finally, as empirical researches and media sources reveal, some charities are involving in business areas where the private sector is strong. This practice of

¹⁹³ Belete, *supra* note 152, P. 63.

¹⁹⁴ See OCS Proclamation, Article 63.

charities is against the organizational existence of charities. Such a wide-open position of the law will result in a range of adverse consequences such as losing focus to the central mission of charitable organizations, unfair competition, risk of business failure, and reduction of social trust and cooperation of the society towards the nonprofit organizations. So, the open position of the civil societies' organization legal regimes of Ethiopia shall be revisited in light of the organizational paradigm and major international experiences. Therefore, as an income generation activity charitable organization shall only be engaged in primary purpose and ancillary business activities. Alternatively, as a way to help them to conserve or manage their assets, they could be allowed to participate in passive investment with a threshold limit in the participation.