

Doing Business via Non-profits: Lessons from the US for Ethiopia

By Sisay Habte Gemedo

LL.M. SHORT THESIS
COURSE: Law for Small and Mid-Scale start up Enterprises
PROFESSOR: Tibor Tajti
Central European University
1051 Budapest, Nador utca 9.
Hungary

Table of Content

Acknowledgment	i
List of abbreviations	ii
Abstract	iii
Introduction.....	1
Chapter 1. Defining Not-for-Profits.....	6
1.1. Definition	7
1.2. Historical Development.....	9
1.3. Theories on the role of NGO's	11
1.4. Types and classification of NPO's/NGO's	13
1.4.1. Based on source of income.	13
1.4.2. Based on legal form they may have.....	13
1.4.3. Based on control and service	14
1.5. Characteristics of the Non-profit structure in comparison to the for-profit structure	15
Chapter 2: Status of Non-governmental organization in the US and Ethiopia	17
2.1. Non-governmental organization in the US.....	17
2.1.1. Formation of non-profit organization in the US	20
2.1.2. The Anatomy of the nonprofit Sector of the US	21
2.1.2.1. Nonprofits under the Internal revenue code §501/c//3/	22
2.1.2.2. Civic organizations under §501/c//4/	27
2.1.3. Regulation of not-for-profits in the US	28
2.2. Charities and associations /Non-governmental associations/ in Ethiopia.....	29
2.2.1. Nonprofit regulation under Ethiopian law	30
2.2.1.1. The Civil and Commercial codes of Ethiopia on Non profits	30
2.2.2. Formation Requirements.....	34
2.2.3. Sources of Funding and Restriction on Activities	35
2.2.4. Taxation of CSO's	36
2.2.5. Supervision and dissolution of CSO's	36
Chapter 3. NGO's doing Business	39
3.1. Earned income opportunities.....	41
3.1.1. Incidental profit	41

3.1.2. For- profit subsidiaries.....	43
3.1.3. Social Purpose Enterprises	44
3.2. Business partnership strategies	45
3.2.1. Program related investment /PRI/.....	47
3.2.2. Socially-responsible venture capital	48
3.2.3. Social Impact Investment tools.....	49
3.3. New Frontiers to finance NPO's	51
Chapter 4. Recommendations and Conclusion	55
Bibliography	59

Acknowledgment

I would like to firstly thank God for all His blessings in my life. I would also like to thank my ‘investors’, my wonderful parents, my beautiful sisters, Mes, Kidi and Hoss and my beloved fiancée Ashenafi, whose love and support keeps me going. No amount of words can express what you all mean to me. Thank you!!!

Last but not least I would like to thank my supervisor Professor Tibor Tajiti for introducing me to this topic as well as his invaluable contributions to my knowledge in the area.

List of abbreviations

CSO- Charities and societies

IRC- Internal Revenue code

IRS- Internal Revenue Services

L3C- Low-Profit Limited Liability Company

NGO- Nongovernmental Organization

NPO-Not for-profit organizations

PRI-Program related investment

SSX-Social stock exchange

UBIT- Unrelated Business Income Tax

US- United States

USC- United States Code

USAID- United States agency for International Development

Abstract

Non-governmental organizations play a key role in society both the social or economically. These Non-governmental organizations (hereinafter: NGO's) usually require a lot of money for their running and also for the work they do in the society. This resource is usually found in the form of donations by different individuals, local and international organizations and local governments through tax advantages and exemptions.

The issue of funding is considered an inherent problem of NGO's destined to happen at one point or another in their life. This problem is even worsened in countries like Ethiopia where restrictions exist as to the source of the fund if the NGO is involved in advocacy services. The Charities and Associations Proclamation number. 621/2009 under Article 2 provides that a charity is to be considered as "Ethiopian Charities" or "Ethiopian Societies", which can involve in human rights advocacy, if formed under the laws of Ethiopia, all of its members are Ethiopians, generates income completely or 90% from Ethiopia and if wholly controlled by Ethiopians.

The purpose of this paper is to evaluate the not for-profit system of the United States with regard to Fund raising through business activities and to analyze whether such a system could be workable in Ethiopia.

By doing so the thesis will contribute to the field by providing solutions on how to handle the challenges presented by the Charities and Societies proclamation and make suggestions that may better the Ethiopian Non-profit law and increase the contribution of the non-profit sector to the economy.

Introduction

In 2009 Ethiopia enacted a proclamation titled ‘charities and societies proclamation’¹ which regulates charities and societies (herein after CSO) in Ethiopia so as to help citizens ‘realize their right to association’ and also to ‘aid and facilitate the role CSO play in the development of the Ethiopian people’.² This proclamation makes a distinction between Ethiopian charities on the one hand and Ethiopian resident charities and foreign charities based on member nationality and on the amount of fund they raise domestically.³ Based on this requirement Ethiopian charities are require to raise a minimum of 90% of their funds from within the country or lose their right to work in areas related to Advocacy.⁴

This proclamation has been criticised as a being a barrier to the protection of human rights and as having a ‘devastating impact on human rights work in Ethiopia.’⁵ In addition to affecting the NPO’s working on human rights and the proclamation has also missed on a great opportunity to provide better detail on how NPO’s may raise funds if not through donations.

The economy of a country may be divided in to three sectors based on the actors that are involved in it; the Primary or Public, Secondary and Tertiary sector. The active participants of these being the government, businesses or for-profit entities and not-for-profits respectively.⁶

The focus of this thesis is the Third Sector of Non-profit organizations or Non-governmental organizations which is traditionally related to International Aid and Relief organizations. There

¹ Charities and societies proclamation no. 621/2009, 15th year no.25, Federal Negarit Gazeta, (2009).

² Ibid, Preamble.

³ Ibid, Art. 2/2/-2/4/.

⁴ Ibid, Art.

⁵ Amnesty international, Stifling human rights work: the impact of civil society legislation In Ethiopia, 5(2012).

⁶ Corry Olaf, Defining and Theorizing the Third sector, R. Taylor (ed.), Third sector research, 11(2010).

seems to be a general understanding that not-for-profits work through aid and funding from donors and this is because most not-for-profits rely on external donations and funding. This perception is however wrong. This thesis aims to show that in countries like the US the major source of revenue is income earned by the NPO's.

This sector is characterized by its voluntary nature, as it uses not only paid staff but also volunteers in its day to day activity, and its commitment to serving the public for non-profit.⁷ It is this aspect that is a source of problem for many NPO's because funding in the form of donations are very difficult to get due to the ever increasing competition in the not-for-profit market and more significantly due to the very small amount of money donated yearly. This is especially a problem for most NPO's in developing and least developed countries because of the significantly lower donations they get from within the country as the population has very little dispensable income to donate to charities. The current financial and political problems all over the world also have not helped as countries are focusing with in their own respective countries to find solutions to their own problems as well as stretching the little funding that exists to cover many problems.

This challenge is made harder by legislations like the one in Ethiopia which require that if Not-for-profit organization in the form of charities and associations are to engage in Advocacy⁸ services they must be fully controlled by Ethiopians and must raise at least 90% of their funds from within the country⁹ which is very difficult because of the country's economic challenges.

⁷ Id, Page 13.

⁸ According to the charities and societies proclamation article 14/5/ these activities include the advancement of human and democratic rights, the promotion of equality of nations, nationalities and peoples and that of gender and religion, the promotion of the rights of the disabled and children's rights, the promotion of conflict resolution or reconciliation and the promotion of the efficiency of the justice and law enforcement services.

⁹ Supra note 1, Article 2/2/.

As a consequence charities existing at the time of the promulgation of this proclamation both as well as up and coming ones are forced to make the decision of whether to stay out of those sectors requiring such a capital requirement or just close shop.¹⁰ Some of the survival strategies include restructuring of the NPO/NGO's by changing their main purpose in to closely related but non excluded activities while others have been unable to survive this change leaving the market or changed their purpose away from such activities.¹¹ This is unfortunately a sad reality for a country like Ethiopia which requires a lot of work in this sectors whether in the advancement of human rights and democracy, promotion of rights of women and children or promotion of efficiency of the Justice system.¹²

The purpose of this thesis is to suggest options on how the interaction of the not-for-profit sector with the business may serve as a source of income that could help the NPO reach its capital limit and make it sustainable. This will be done through the analysis of the relationship between the not-for-profit sector and the business sector in the US, the legal and institutional frame work that exist to facilitate and to allow for such a relationship and to draw some lessons for Ethiopian NPO's as well as its business sector.

¹⁰ Amnesty international in its 2012 report on stifling human rights work the impact of civil society legislation in Ethiopia mentions organizations that had to make this decision. It is not only human rights institutions that suffer the consequences. As described at the beginning of this chapter because of the wide range of the activities excluded by the proclamation from foreign funding institutions like the Ethiopian arbitration and conciliation /EACC/ which was the only non-governmental arbitration and conciliation have had to suffer such consequences.

¹¹ Kendra Dupuy, James Ron and Aseem Prakash, Reclaiming Political Terrain: The Regulatory Crackdown on Overseas Funding for NGO's, 16-17(2010) available at <http://www.cide.edu/publicaciones/status/dts/dtei%20232.pdf> accessed on 14/02/2015.

¹² Human rights watch, World Report 2015: Ethiopia, (2015), <http://www.refworld.org/docid/54cf83aaa.html> (accessed 14 February 2015)

Research Question

The thesis will answer three basic questions. Firstly whether the System in the US is comparable or compatible enough to suggest options for Ethiopia. Secondly whether the existing legal system of Ethiopia would allow for the Non-profit sector to involve in or interact with the Business sector and thirdly if so under what conditions and to what extent.

The thesis will answer the above questions through the use of a comparative analysis of the US and Ethiopian legal systems with regard to laws regulating the Not-for-Profit sector and the experiences of both legal systems. The purpose of this comparison is to see the difference and similarity between the two systems and to suggest possible lessons for Ethiopia with regard to how Non-profit organizations take part in business whether through investing in business activity like entering in to joint venture and if this is possible how this is to be regulated. The thesis will also evaluate the different kinds of non-profit entities these two systems have and their similarity so as to recommend possible additions to or modifications of the Ethiopian system non-profit system.

By doing so the thesis will contribute to the field by providing solutions on how to handle the challenges presented by the Charities and Societies proclamation and hopefully make suggestions that may better the Ethiopian Non-profit law and increase the contribution of the non-profit sector to the economy.

Limitations

The thesis is limited in the possible suggestions of NPO-Business relationship as some of the concepts are recent and have not been properly tested out. Some concepts like L3C have been criticized by some states in the US and have been abandoned. Hence proper analysis of their

meanings, consequence and possible regulation must be considered before efforts are made to try implementing them as they are.

Thesis Structure

The first chapter of the thesis discusses basic concepts about Non-profits with the purpose of laying background knowledge of the history, kinds and theories on NPOs.

The second Chapter is dedicated to analyzing the US and Ethiopian systems of Non-profits focusing of Formation requirement, Kinds of non-profit entities, regulatory framework and restrictions of sources of funding and activities in the two systems. This chapter will highlight the differences and similarities between the two systems and show how the two systems function.

Chapter three will discuss the mechanisms of how a not-for-profit organization may take part in Business Activity within the limits of the Ethiopian system. This chapter will analyze different options used in the US system and evaluate whether the same may be applicable to Ethiopia.

Lastly recommendations will be made on the finding of previous chapters on how existing and up and coming not-for-profits in Ethiopia may raise funds from Business activities.

Chapter 1. Defining Not-for-Profits

Not-for-profit organizations/NPO's/ and Non-governmental organizations /NGO's/ are traditionally associated with charities or organizations whose activities are considered 'charitable'. Not-for-profit organizations have today expanded their charitable nature to include not only providing aid in the form of relief or helping the destitute but to establishing entities such as hospital and nursing homes, schools or different clubs .This has led to difficulty in defining NPO's because of their different forms, purposes and objectives.

Let us however begin by discussing the two terms i.e. Not-for-profit organizations and Non-Governmental organizations. These terms are interchangeably used by many to refer to practically the same thing as they both refer to organizations which are not governmental and also not private at the same time.¹³

Some make the distinction between the two by providing that their main difference is the scope with in which they operate.¹⁴ They argue that NGO's 'have broader and internationally driven footprint'¹⁵ while NPO's are more local in nature when compared to NGO's.

Powell and Steinberg¹⁶ on the other hand argue that Non-governmental Organizations are different from Not-for-Profit organizations in that they are a narrower part of the not-for-profit sector. They

¹³ Understanding International NGOs and Non-profits, available at <https://www.maxwell.syr.edu/career.aspx?id=202> accessed on 07/02/2015.

¹⁴ Non-Governmental Organizations: Doing the Work Governments Can't or Won't Do, (2011), <http://ngos.org/difference-between-ngos-and-non-profits/> accessed on 07/02/2015.

¹⁵ Id.

¹⁶ Powell W. Walker and Steinberg Richard (ed.), The Non-profit Sector: A research Handbook, (2nd ed.2006).

argue that the term is used by jurisdictions that follow the conflict model of society which view NPO's as a means of citizens opposing against the existing political and economic situation.¹⁷

It is thus my opinion from considering the activities of both NPO's and NGO's that the difference firstly seems to be in terminology as entities that would qualify to be NGO's in one system are NPO's in another and vice versa. The term Non-governmental organization is used more widely outside the United States while the United States use the term Not-for-profit as this is the term used by the USC to describe entities that may be tax exempted because of the purpose for which they are established and also the fact that they don't distribute their profit. These are also similar characteristics of the Non-governmental-organization. It is for this purpose that most international documents and researches use them interchangeably or with a slash.

For the purpose of this thesis the words are used interchangeably as the US and Ethiopia use Not-for-profit and Non-governmental Organization respectively to refer to the same sector of the economy.¹⁸

1.1. Definition

The NGO/ NPO sector is very hard to define because of the diverse kinds of activities that the organizations take part in as well as the various designations given to them in different countries. The United Nations defines Non-governmental organization as 'a not-for-profit group, principally independent from government, which is organized on a local, national or international level to address issues in support of the public good. Task-oriented and made up of people with a common

¹⁷ Anheier K. Helmut and Salamon M. Lester, The Non-Profit Sector In Comparative Perspective, in The Non-profit Sector: A research Handbook, 91 (Powell et al ed., 2nd ed., 2006)

¹⁸ Different legal systems have been known to use different terminologies to refer to not for-profits in different terminology. In the UK they use charities where as in continental Europe it is common to hear them referred to as foundations.

interest.'¹⁹ While the World Bank on the other hand defines NGOs as 'private organizations that pursue activities to relieve the suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development.'²⁰

Salamon and Anheier²¹ give a wider and detailed definition by creating five elements that make an organization not-for-profit. They provide that firstly NPO's and NGO's have to be organized. This is, however, not in reference to the incorporation or registration for that matter but rather the existence of a structure within the organization in order to achieve the purpose for which it is created. Secondly they provide that NGO's/NPO's must be institutionally separate from the government. This, however, should not be interpreted as meaning that they do not have any relation to the government, they may still get funding or donation or benefit in the form of tax exemption from the government. Thirdly as an extension of the second requirement they provide that there should not only be institutional separation but also self-governance.

Another basic ground of differentiation and probably the most important is the fact that NPO's and NGO's are not distributing profits.²² The basic difference between Not-for-profits and their profit counter parts is the fact that they do not distribute any profit in the form of dividend or otherwise.²³

¹⁹ Non-Governmental Organizations, http://www.unrol.org/article.aspx?article_id=23, accessed on 04/02/2015

²⁰ Non-governmental organizations and civil society engagement in world bank supported projects: lessons from OED evaluations, lessons and practices , (no. 18, august 2002), <http://www.ieg.worldbank.org/data/reports/lp18.pdf> accessed on 07/02/2015

²¹ Salamon, Lester m. And Helmut k. Anheier, The international classification of non-profit organizations: ICNPO-revision 1, in working papers of the Johns Hopkins comparative non-profit sector project, (no. 19, 1996) http://adm-cf.com/jhu/pdfs/cnp_working_papers/cnp_wp19.pdf accessed on 07/02/15.

²² Peter Frumkin, On Being Nonprofit: A conceptual and Policy Primer, p.4 (2002).

²³ This concept is what is referred to as the Non Distribution Constraint under US law. This is a condition as provided under IRC §501(c)(3) for a nonprofit to be considered as tax exempt. This concept is discussed in detail on page 28 of this thesis.

Last but not least they must generally be voluntary²⁴ in their membership as well as operations and management.²⁵

1.2. Historical Development

The development of NPO's traces its roots to early society and philanthropic activities done under the guise of religion where a deceased would leave his/her property to his/her heirs in perpetuity to be used for a public good.²⁶ This was associated with the religious beliefs of the people who wanted to leave something good behind in the hopes of salvation for themselves in the afterlife by donating to the church or religious institutions. The Word Philanthropy was coined by the Greeks²⁷ which literally translated means 'love of mankind'²⁸. Because the Greek society at the time believed that private wealth was 'a real trust in which all members of the civic community held a share'²⁹ those holding this private trust were expected to share it with the rest of the society through contributions they made to the society and the city.³⁰

Ancient Judaism was one of the first religions to make philanthropy a duty based on the Hebrew Bible passages that were understood to require assisting the poor as one duty.³¹

²⁴ The voluntary nature of nonprofits is a principle as citizens cannot be forced or coerced in to giving their time and resource to nonprofits and thus this sector depends to a large extent on the kindness of man. There are however exceptions to the voluntary membership element of some nonprofits like Bar Associations whose membership is mandatory if a lawyer wants to practice law one example is the requirement by some states in the US like the Virginia just to mention one of the many states where bar membership is mandatory.

²⁵ See Salamon and Anheier, Supra note 21.

²⁶ Marion R. Fremont-Smith, Governing Non-Profit Organization: Federal And State Law Regulation, 20(2004).

²⁷ Peter Dobkin Hall, A Historical Overview of Philanthropy, Voluntary Associations, and Nonprofit Organizations in the United States, 1600–2000, In The non-profit Sector a research hand book, 20(Powell et al eds., 2nd ed, 2006).

²⁸ See < <http://www.businessdictionary.com/definition/philanthropy.html> > accessed on 15/02/15.

²⁹ See Dobkin Hall, supra note 27.

³⁰ Id.

³¹ Id, p.14.

It was however the Romans that declared such entities created to administer the trust as legal entities that have personality of their own who were allowed to receive gifts and donations.³² Through time the purpose of these associations was changed from honoring gods to aiding the needy.³³ It was Constantine who saw the need for the state to help such charitable organizations through protection from property alienation.³⁴ It was encouraged that the followers of the church make contribution to the institution which were then run by the church itself. The foundations received lots of donations from followers which led to the idea that the *Corpus Juris Civilis* that was being developed at the time should include protection for these church foundations.³⁵ The law provided that if the Original purpose for which the gift or donation was not used within a particular time frame set by the donor it would be returned to the heir or donor.³⁶ This was followed by Christian churches acting as trustees to the funds left by the deceased or a person in existence to administer the fund and distributing them to the needy.³⁷

After the introduction of Islam in the 7th century Islamic equivalents of charitable foundation and trusts were established in the Muslim community. These foundations could be established for any purpose permitted by Islam in particular for family purpose, and were restricted from accumulating income.³⁸ The Islamic Charities institution *Waqf* exist even today in Middle Eastern countries.³⁹

³² See Fremont-Smith, *supra* note 26.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Monzer Kahf, *Role of Waqf in sustainable society: Kinds and Objective of Islamic Waqf*, (December 2014), <http://www.onislam.net/english/shariah/contemporary-issues/islamic-themes/452483-type-goals-islam-waqf-endowment-finance-economy.html> accessed on 15/02/15.

When we fast forward to the 20th century we find that Non-profit organizations had developed in kind and service as they had broadened their scope as well as being regulated by statutes in different legal systems.

The first NGO, Rotary club, was established in the US in 1905.⁴⁰ The term NGO was first used in the United Nations charter when providing for entities that were non-governmental as well as non-member states who would have a consultative role with in the UN.⁴¹ Until 2010 there were 3382 NGO's consulting the UN⁴², over 40,000 international organizations and 1-2 million NGO's in India alone.⁴³ This sector has gained great repute in its part of welfare provision, education, community development, international relations, the environment, arts and culture.'⁴⁴

So why have NPO's spread so much? Let us take a look at the theories justifying the role and purpose of NPO's/NGO's.

1.3. Theories on the role of NGO's

There have been many theories proposed as to why Not-for-profits are needed and the roles they play in society. There are common issues that are raised by the different theories and arguments and they can be summarized as follows.

⁴⁰ Lynn Lawry ed., Guide to Nongovernmental Organizations for the Military: A primer for the military about private, voluntary, and nongovernmental organizations operating in humanitarian emergencies globally, 26(2009), <http://www.fas.org/irp/doddir/dod/ngo-guide.pdf> accessed on 15/02/15.

⁴¹ Id.

⁴² See <<http://www.statista.com/statistics/268357/changes-in-the-number-of-ngos-worldwide-since-1948/>>accessed 15/02/2015.

⁴³ See <www.ngo.in>accessed on 15/02/2015

⁴⁴ Helmut Anheier, Non-Profit Organizations: Theory, Management, Policy, p.4 (2005).

The First theory is the Public Good theory which provides that ‘Non-profits serve as private producers of public goods.’⁴⁵ According to this theory Public goods may be available in the market but NPO’s are created to meet the residual demand of the public goods to those individuals whose taste or need doesn’t match the average goods available.⁴⁶ Thus they are a response to Market failure as society needed a non-market mechanism to produce these goods and services that meet the need of those few whose needs could not otherwise be met.⁴⁷

The Contract Failure theory anticipates another kind of failure in the market where the ordinary contractual mechanism is not able to protect the consumer from deception by a for-profit entity, because of the information asymmetry that exists in the market, as the deception will benefit the one in control of the for-profit entity.⁴⁸ According to the contract failure theory NPO’s are responses to agency failure.⁴⁹

In a NPO, however, because of the non-distribution restriction the one in control of a NPO has nothing to gain from such a deception personally and would thus better serve the customer than for-profit entities.⁵⁰

The above two alone, however, cannot in of themselves lead to the need for NPO’s/NGO’s as there needs to be a difficulty or inability of the governments to be able to respond to such situation. Thus the third group of theories assume that it is a government’s failure that in addition to the market failure that leads to the need of NPO’s/NGO’s.⁵¹ Fishman and Schwarz argue that there may be

⁴⁵ Hansmann, Henry, Economic Theories of Non-profit Organizations, In the Non-profit Sector: A Research Handbook, p.28-29 (W. W. Powell (ed.), 1st ed., 1987).

⁴⁶ Id, p.29-30.

⁴⁷ Fishman J. James and Schwarz Stephen, Non-profit Organizations: Cases and Materials, p.38(2nd ed.,2000)

⁴⁸ Id.

⁴⁹ See Hansmann, supra note 45.

⁵⁰ See Anheier, supra note 44, p. 123.

⁵¹ See Fishman and Schwarz, supra note 47, p.39.

preference for the non-governmental response to a problem than the governmental because of the bureaucratic nature that seems to accompany government actions.⁵²

Another Theory with regard to NPO's is one forwarded by Hansmann called 'The trustworthiness theory' which provides that NPOs appear more trustworthy than their not-for-profit counterparts because of the Non distribution Constraint by assuring the donors the appropriate use of the finances as the ones in control cannot benefit personally from and by serving as an indicator to consumers that they will not be cheated by the ones in control of the institution as they have nothing to benefit from it.⁵³

1.4. Types and classification of NPO's/NGO's

NPO's may be classified in to different categories based on various grounds.⁵⁴ These are

1.4.1. Based on source of income.

Based on the source of income NPO's/NGO's may be classified as donative or commercial. Donative-not-for-profits receive or base their source of income on funding from donors while the commercial kind of non-profits depend on the sale of the good they are producing or the service they are providing as a source of income.⁵⁵

1.4.2. Based on legal form they may have

Based on this criteria not-for- profits may be classified⁵⁶as

⁵² Id.

⁵³ Vladislav Valentinov, The economics of the non-distribution constraint: A critical reappraisal, (September 2007) *Annals of Public and Cooperative Economics* 79:1 2008 p. 35–52.

⁵⁴ See Hansmann, *supra* note 45.

⁵⁵ Id.

⁵⁶ Stillman B. Grant, NGO Law and Governance: A Resource Book, p.6 (2006).

1. Unincorporated associations: which are associations created by a two or more persons that work informally without incorporation to achieve a particular common goal.⁵⁷ This kind of not-for-profits may be subject to registration only with no addition formal requirements but no distribution of profit like all its not-for-profit counter parts.⁵⁸

2. Incorporated associations or Non-profit corporations: This are not-for-profits that have gone through the incorporation process of registration as normal corporate entities with the exception of profit sharing restrictions.⁵⁹ These are the most common kinds of non-profits. This group of non-profit benefit from limited liability which protects the assets of the directors in case of bankruptcy and the corporations' creditors.⁶⁰

1.4.3. Based on control and service

Based on who the not-for-profit is established to serve not-profits may be divided in to the public serving organization or public benefit organizations, which are organizations established to serve the public through their day to day activity. Examples of such an institution can be Institutions involved in social welfare and action, religious organizations⁶¹ and mutual serving organization, which are created with the purpose of benefiting their members. Some examples of mutual serving

⁵⁷ Id.

⁵⁸ Salamon, Lester and Susan I. Q. Flaherty, Non-profit law: ten issues in search of resolution, p.7 (Lester m. Salamon and Helmut k. Anheier eds, 1996), http://ccss.jhu.edu/wp-content/uploads/downloads/2011/09/cnp_wp20_1996.pdf accessed on 08/02/2015.

⁵⁹ See Stillman, supra note 56, p.7-8.

⁶⁰ See Salamon and Flaherty, supra note 58.

⁶¹ It has to be noted that not all legal systems view religious institutions as part not-for-profit sector. They are neither profit making nor non-profit. They are also not considered as associations. They are considered as separate entities with legal personality with absolute autonomy who have legal duty in their interaction with the rest of the economy. Ethiopia is a great example of countries that exclude religious institutions unless organized for this particular purpose as separate entities.

or member benefit organizations are labor unions, business leagues, social & recreational and fraternal societies.⁶²

The different form of non-profit include Trusts, charities and foundations which are entities created by money received from benefactors or donors while alive or in a will up on which they provide for the donation to or the creation of a not-for-profit for a purpose chosen by the benefactor.⁶³ While Charities and Foundations have separate legal entities a trust does not have a separate legal entity.⁶⁴ Trusts and Foundations are controlled by trustees to achieve the goals provided by the benefactor.⁶⁵

NPOs may also be classified based on who organizes them as GO-NGO which are government organized NGO's, DO-NGO's which are non-governmental organization organized by donors and Quasi-NGO (pronounced "QUANGO.")⁶⁶

1.5. Characteristics of the Non-profit structure in comparison to the for-profit structure

Aside being governed by different regimes of law Non-profits and for-profits have some marked differences. The first and the most significant difference is the restriction on Non-profits not to distribute profit to members or shareholders in the form of dividends. Non-profit entities are generally restricted from making profit in the sense that the purpose of their establishment should

⁶² Lester m. Salamon, Non-profit America: an overview, in national academy of sciences workshop on NSF survey of non-profit R and D Washington, D.C., (Slide 6, June 30, 2014).

⁶³ See Stillman, supra note 56.

⁶⁴ Id, p. 6.

⁶⁵ Id, p.7.

⁶⁶ Carapico Sheila, NGO'S, INGOS, GO-NGO's AND DO-NGO's: Making sense of non-governmental organizations, Middle East report, in critiquing NGOs: assessing the last decade 12-15 (no.214, 2000), <http://www.jstor.org/stable/1520187> accessed on 26/01/2015.

be one of serving the public rather than generating profit. Most legal systems however provide that NGO's/NPO's may get profit incidental to the activities that they take part in.⁶⁷

The second characteristic of NPO/NGO's is the restriction on how the company's assets are to be distributed in case of dissolution. Unlike a for-profit company whose assets will be either paid to creditors and the remainder returned to the shareholders in proportion to their respective shares in a not-for-profit entity the assets don't go to the members or owners but depending on the respective law or legal system the assets may go to a non-profit working in the same area or to a non-profit organization so that it may be used to continue to serve the public.⁶⁸

Another characteristic is that most legal systems provide for incentives in the form of Tax exemption to NPO's while there for-profit counter parts are subject to varying range of taxes depending on the sector they involve in.⁶⁹

⁶⁷ One example can be the Ethiopian Charities proclamation which provides under article 103 that NGO's may be allowed to take part in activity incidental to the achievement of their purpose but restricts them from sharing any profit in the form of dividends with shareholders. A similar system also exists in the US and this is used to evaluate whether or not an entity is eligible for tax exemption under the IRC §501/c//3/.

⁶⁸ US case law has provided in the case *In Re Los Angeles county Pioneer society* (40 Ca.2d 852, 257 P.2d 1) that not for-profit may not distribute the assets of a company even up on dissolution unless the not for-profit was one established for mutual benefit.

⁶⁹ IRC §501/c/3/ is one example of how legal systems may provide for Tax exemptions for non-profits that meet their particular requirements.

Chapter 2: Status of Non-governmental organization in the US and Ethiopia

2.1. Non-governmental organization in the US

The not-for-profit sector of the US plays a very significant role in the economy of the country in addition to the obvious contribution it makes to the social and political environment of the country. The not-for-profit sector is a \$500 billion industry with operational expenditure of \$502 million in 1995 which is equivalent at the time to 6.9% of the country's gross domestic product.⁷⁰

The number of NPO's registered by the IRS in 2012 was approximately 1.4 million with an estimated contribution of \$887.3 billion to the economy making up 5.4% of the country's gross domestic product.⁷¹ According to the US department of Labour, NPO's in 2012 'accounted for 11.4 million jobs and 10.3 percent of all private sector employment.'⁷²

The nonprofit sector in the US 'accounts for half of the colleges and Hospitals in the US, almost two-third of all social service agencies, most civic associations and almost all symphonies and Orchestras'⁷³ making the US not-for-profit as one of the largest not-for-profit sectors in the world.⁷⁴

⁷⁰ S. Wojciech Sokolowski and Lester Salamon, The United States in Global civil society: Dimensions of the nonprofit sector by Salmon et al, 263(1999).

⁷¹ Brice S. McKeever and Sarah L. Pettijohn, The Nonprofit Sector in Brief 2014: Public Charities, Giving, and Volunteering, 2014 page available at <http://www.urban.org/UploadedPDF/413277-Nonprofit-Sector-in-Brief-2014.pdf> accessed on 15/03/2015.

⁷² See < http://www.bls.gov/opub/ted/2014/ted_20141021.htm > accessed on 26/03/2015

⁷³ See Salamon and Sokolowski, supra note 70, p.261.

⁷⁴ Id, p. 265.

But how one must wonder did the US not-for-profit sector reach such a magnitude? Why has it thrived so much while in other countries this sector is struggling due to different constraints?

The history of not-for-profits in the US goes back to dates older than the republic itself where early settlers organized themselves in different groups to address their common problems.⁷⁵ Thus charitable, educational and religious organizations date back thousands of years and some like the Harvard College trace their history to the colonial times. The history of nonprofit Organizations as a structured and unified entity as well as a sector of the economy, however, dates back to the 1970's.⁷⁶

The position the not-for-profit sector holds today is significantly attributable to the role of the American social welfare system which has had its fair share of challenges and strains leading the need in the increase of welfare providers and also that they have a separate means from the government to try to sustain themselves. That is why today we can find nonprofits involved in almost all aspects of welfare provision from schools and universities to retirement homes and hospitals.⁷⁷

One favorable factor forwarded as one of the reasons for the high development of not-for-profits in the US is the 'peculiar culture and history of the country'⁷⁸. The main features of this history according to Salamon and Sokolowski is the strong individualistic culture which has led to the

⁷⁵ Paul Arnsberger, Melissa Ludlum, Margaret Riley, and Mark Stanton, A History of the tax-exempt Sector: An SOI Perspective, in the Statistics of income Bulletin, 2008, page 105.

⁷⁶ See Dobkin Hall, *supra* note 18, p.3.

⁷⁷ Lester M. Salamon, *Americas Nonprofit sector: A primer*, 1992, p.41-47.

⁷⁸ See Sokolowski and Salamon, *Supra* note 70, p.267.

mistrust in the concentration of power be it political or economic in the hands of one body the government.⁷⁹

Salamon and Sokolowski also argue that this individualistic culture and mistrust has been reinforced by the strong economic interest in the sector which has led to the push for less governmental involvement and the push for tax benefits attached to such activity unless the taxes were deemed absolutely necessary.⁸⁰

They also argue that the concern for religious freedom and freedom of expression and association that is considered to be very important by the society has opened doors for entities where citizens may join together to work to improve their collective wellbeing.⁸¹

There was thus a need to clearly define and demarcate between the kinds of not-for-profits, and what benefits were to be given. These basic rules were set starting from the 1960's providing for things like who are considered as not for-profit, activities they may involve in, how they may be run i.e. whether they could be incorporated or not. All these were done through the instrumentality of case precedents as well as statutes.

⁷⁹ Id.

⁸⁰ Id, p.268.

⁸¹ Id.

2.1.1. Formation of non-profit organization in the US

Nonprofit organizations are usually referred to as ‘non-stock Corporations’ as this is a very distinguishing factor from for-profits.⁸² NPO’s can take the form of a corporation, individual enterprise, unincorporated association, partnership or foundation.⁸³

Non-profit organizations are created in accordance to the law of the state in which they are incorporated. NPOS must be designated as nonprofit when created and pursue purposes permitted by statutes for non-profit organizations.

There are two main set of regulation in the US when it comes to NPO’s: Federal and State. At the federal level the most authoritative document next to the constitution on matters of nonprofits is title 26 of the United States code also referred to as the internal revenue code.⁸⁴ This title provides a very detailed outline of Tax treatment of different kinds of taxes, their application to different entities and under different situations.⁸⁵ The internal revenue code is supported by the code of federal regulation which also contains a Title 26 dedicated to internal revenue service’s detailing types of taxes, procedure and other related matters.⁸⁶

⁸²Unlike for-profits, not for-profits don’t have stocks in the proper sense of the term as the members are not shareholders per se as they receive no divided or profit for their membership and receive nothing upon the dissolution of the NPO.

⁸³ See <https://www.law.cornell.edu/wex/non-profit_organizations> accessed on 11/03/2015

⁸⁴ Mercer, E., *Legal Basis for NPO Regulation*, available at: http://www.muridae.com/nporegulation/legal_basis.html accessed on 20 March 2015.

⁸⁵ See <<https://www.law.cornell.edu/uscode/text/26>> accessed on 11/03/2015

⁸⁶ 26 CFR 601.101 available at <https://www.law.cornell.edu/cfr/text/26>

On State level the relevant statute may be divided into two general groups of Model and Uniform acts⁸⁷ and Laws and regulations organized by the state and their municipalities.⁸⁸ Amongst the model and uniform acts the most commonly adopted is the revised model nonprofit corporation act⁸⁹ which is a model law for incorporated nonprofits made in 1986 which is meant to be adopted by states and serve as a state nonprofit law.⁹⁰ In addition to the federal and state regulation court cases also play a big role in shaping NPO regulation.

Generally nonprofits should be created for a purpose deemed to be charitable under their respective law. The Revised model nonprofit corporation act provides that a purpose that is deemed charitable is one ‘that would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under Section 501(c) (3) or (4) of the Internal Revenue Code’.⁹¹

2.1.2. The Anatomy of the nonprofit Sector of the US

As discussed in chapter one there are a varieties of definition on nonprofits are and what entities should qualify as nonprofits. In the US a nonprofit can refer to entities classified by Internal revenue code under §501(c)(3) as charitable tax-exempts or to a larger and more inclusive group as provided by § 501(c)(4) as civic organization.⁹²

⁸⁷ The model and uniform acts include The Model Nonprofit Corporation Act, The Model Charitable Solicitations Act, Uniform Unincorporated Nonprofit Association Act, Model Charitable Gift Annuities and Charitable Gift Annuities Exemption Acts, Uniform Prudent Investor Act, Uniform Management of Institutional Funds Act, Uniform Principal and Income Act and last but not least the Uniform Trust Act

⁸⁸ See Mercer, *supra* note 84.

⁸⁹ See < <http://www.hg.org/nonprofit-organizations.html> > (Accessed on 20/03/2015)

⁹⁰ For details on the revised model nonprofit corporation please see <http://ali.state.al.us/docs/Nonprofit-Corp-Act-8-2008.pdf> and <http://nonprofitorganizations.uslegal.com/state-laws-governing-nonprofit-corporations/> accessed on 20/03/2015.

⁹¹ American Bar Association, Model Nonprofit Corporation Act: Official Text with Official Comments and Statutory Cross-references Adopted August 2008, 3rd ed, § 1.40. (2009)

⁹² Understanding Nonprofit Status and Tax Exemption, <http://ctb.ku.edu/en/table-of-contents/finances/managing-finances/nonprofit-status-tax-exemption/main> accessed on 05/03/2015.

Nonprofits in the US benefit from two layers of benefit in the form of State Tax exemption which may range from exemption from Sales tax, Income tax and property tax varying from state to state. While the federal government exempts them if they qualify as per the Internal Revenue code which is the US tax code from federal income tax.⁹³

2.1.2.1. **Nonprofits under the Internal revenue code §501(c)(3)**

It is a common misconception that Nonprofits and tax exempts are one and the same. This is however not to say they are not related. Nonprofits are usually preferred by many for the benefit of tax reduction or tax exemption which is common in most legal systems. This difference is more distinctly visible in the US system as the granting of nonprofit status is done by the state in which the entity is incorporated while the status of tax exemption is given by the federal government.⁹⁴ The fact that a nonprofit is incorporate it does not automatically warrant that they will be exempt from tax they would thus have to meet different State and federal guidelines to be exempt.⁹⁵

There is no one reason why nonprofits are exempted from tax. Hansmann argues that the basic rational for both State and Federal exemption is to compensate the difficult faced by the nonprofits in raising funding and also to promote the efficiency with which they may serve their customers when compared to their for-profit counterparts.⁹⁶ He argues that if income tax was to be collected from nonprofits it would take a large share of the organizations hard earned capital and would

⁹³ Id.

⁹⁴ Id.

⁹⁵ State taxation and Nonprofit Organizations, North Carolina Department of Revenue, available at <http://www.dor.state.nc.us/publications/nonprofit2008.pdf> accessed on 08/03/2015.

⁹⁶ Henry Hansmann, The rationale for exempting nonprofit organizations from corporate taxation In Nonprofit organizations: Cases and materials, Fishman and Schwarz, 2nd ed., page 341, 2000

further hamper the development and work of the entity. Thus this exemption from income tax can be considered as a ‘subsidy to capital formation’.⁹⁷

Professor Rob Atkinson on the other hand argues that the reason for federal tax exemption is grounded in the need to reward the altruistic decision of the not-for-profit founders to not pursue profit but to help in filling a social gap.⁹⁸ While others who follow the donative theory provide that nonprofits are tax exempt to subsidize them as they are ‘capable of attracting a substantial level of donative support from the public.’⁹⁹

An entity may apply for Federal income tax deduction exemption if it fulfills the requirement set out §501(c)(3) of the Internal Revenue code which lists conditions that have to be met to be tax exempt as well as provides for entities that are excluded from such a benefit. According to §501(c)(3) the organization has to be:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.¹⁰⁰

Let us briefly look at the different elements of this provision

⁹⁷ Id.p.342.

⁹⁸ Id, p.343.

⁹⁹ Id, p.344.

¹⁰⁰ §501(c)(3) of the Internal Revenue Code, available at <https://www.law.cornell.edu/uscode/text/26/501>

A. The organizational test

An entity that wants to benefit from §501(c)(3) has to be organized as a nonprofit corporation, community chest, fund, or foundation. Corporation in this context is to include both incorporated and unincorporated associations while the use of the terms ‘fund’ and ‘foundation’ includes wholly charitable trusts.¹⁰¹ This relates to the language used in the instrument to create the particular entities whether the activities permitted by the documents creating the entity in the form of a trust instrument, article of association, provide for a purpose which is considered exempt and which limit the scope of activities as well.¹⁰² It is imperative that the establishing instrument clearly provide this specifically as a rule even though the activity undertaken by the company is an exempt activity unless the establishing instruments clearly provide the activities it may not be given the tax exempt benefit.¹⁰³

Another test under the organizational test is the requirement that upon dissolution it may under its charter or under the specific state law dedicate its assets to be distributed for the use of one or more exempt purposes by a similar entity but not to be distributed among the shareholders or partners.

B. Operational test

This test requires that the organization engage primarily in activity that accomplish the exempt purpose for which it is created.¹⁰⁴ The contrary reading shows that an insubstantial participation in non-exempt activity is allowed and tolerated. But any profit from such an endeavor is possibly subject to unrelated business income tax.¹⁰⁵

¹⁰¹ See Hansmann, *supra* note 96, p.351.

¹⁰² *Id.*

¹⁰³ *Id.*, p.352.

¹⁰⁴ *Id.*, p.353.

¹⁰⁵ *Id.*

Unrelated business incomes are incomes which are derived by the organization ‘from a trade or business regularly conducted by an exempt organization and not substantially related to the performance by the organization of its exempt purpose or function, except that the organization uses the profits derived from this activity.’¹⁰⁶

The unrelated business income tax as regulated by §511 of the IRC is founded in the need to provide a fair competitive market as allowing the nonprofits to compete in a market with the advantage of tax exemption would be unfair to the rest of the competitors in the market.¹⁰⁷

An activity is considered as unrelated to the main reason for establishment if it contribute as a source of income only and not directly to the achievement of the purpose of the organization.¹⁰⁸ Additionally the activity had to be a trade or business and be carried on regularly.¹⁰⁹ There are however exceptions to what kinds of unrelated incomes are considered to be taxed.¹¹⁰

One express example is the prohibition of NPOs’ from direct or indirect participation in any political campaign supporting or opposing a candidate.¹¹¹ Any donations made to any such cause by the NPO is a clear violation. It even goes to the extent of giving public statement whether verbal or written support or opposition of a candidate may lead to denial or revocation of their tax-exempt

¹⁰⁶ Department of the Treasury Internal Revenue Service, Tax on Unrelated Business Income of Exempt Organizations, Publication 598, p.9. (Rev. January 2015).

¹⁰⁷ James R. Hines Jr. , *Non-Profit Business Activity and the Unrelated Business Income Tax*, in *Tax Policy and the Economy*, Vol. 13 (1999), p. 60 available at <http://www.jstor.org/stable/20061867> accessed on 26/01/2015.

¹⁰⁸ See Fremont-Smith, supra note 26, page 290.

¹⁰⁹ Id.

¹¹⁰ These exceptions will be explained further under chapter 3 in order to properly analyze the significance of these exceptions in the income generation of the non-profit organization.

¹¹¹ See Fremont-Smith, Supra note 261, page 285.

status¹¹² ¹¹³and the imposition of excise tax on the organization as well as the manager who approved the transaction.¹¹⁴

It is not however correct to assume that NPO's may not do anything relating to elections and campaigns. Certain activities may be allowed depending on the facts and circumstances like hosting voter education activities in an impartial manner, helping with voter registration and encouraging people to vote are not prohibited as long as partiality or bias to influence the voters towards a particular side is not evident. Thus according to the IRC it is the element partiality that is regulate.¹¹⁵ ¹¹⁶

C. Non Distribution Constraint

Another test under §501(c)(3) is the requirement that upon dissolution the organization should dedicate its assets to be distributed for the use of one or more exempt purposes by a similar entity but not to be distributed among the shareholders or partners.¹¹⁷ This requirement is not fulfilled if the charter provides that the assets may be distributed to members.¹¹⁸ The requirement is, however, considered met even if nothing is provided in the charter as long as the state law where the entity is registered provides that the organizations assets must be dedicated for charitable purpose upon

¹¹²See<<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501%28c%29%283%29-Tax-Exempt-Organizations>>

¹¹³ There have been many cases like Branch Ministries, Inc. vs. Commissioner, (40F.Supp.2d 15(D.D.C.1999)) where nonprofits argued that this was against their first and fifth amendment right when their tax exempt status was revoked due to it's in this case a church's involvement in partisan political activity.

¹¹⁴ I.R.C. §4955, codified by the Omnibus Budget Reconciliation Act of 1987, Pub.L.No 100-203, §10712(a), 101 Stat.1330, 1330-465.

¹¹⁵See<<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501%28c%29%283%29-Tax-Exempt-Organizations>> accessed on 10/03/2015.

¹¹⁶ This is quite a contrast from the Ethiopian system which as will be discussed on page--- restricts areas of activity for a partly similar reasons but allows it for Ethiopian Nonprofits and prohibits foreign charities from taking part by restricting the source of funding.

¹¹⁷ See Hansmann, supra note 96, p.352.

¹¹⁸ Id, page 353.

dissolution.¹¹⁹ The benefits of protection under the IRC §501(c)(3) include not only the tax exemption to the not for-profit but also eligibility to receive tax-deductible charitable contributions¹²⁰

2.1.2.2. Civic organizations under §501(c)(4)

§ 501(c)(4) of the IRC as the title states is ‘tax exemption applicable to organizations that have not qualified for exemption under §501(c)(3) for reasons of substantial lobbying or political activity’.

121

These include

Civic leagues or organizations not organized for-profit but operated exclusively for the promotion of social welfare, local associations of employees, the membership of which is limited to the employees of a designated person or in a particular municipality and whose net earnings are devoted to charitable, educational or recreational purposes.¹²²

The organizations described under §501(c)(4) differ from the group under 501(c)(3) in many aspect. This category firstly contains the second largest number of nonprofit organizations.¹²³ These group of non-profits are allowed to do ‘unlimited lobbying activity’.¹²⁴ This group is thus referred by some as ‘social welfare organizations’ which is not necessarily inclusive of all the organizations that are meant to be covered by this section.¹²⁵ As it may include also organizations that makes services available only to its members where it is shown that this service of members benefits the community as a whole.¹²⁶

¹¹⁹ Id.

¹²⁰ Applying for 501(c)(3) Tax-Exempt Status, In IRS Publication 4220, p. 3, available at <http://www.irs.gov/pub/irs-pdf/p4220.pdf> accessed on 10/03/2015.

¹²¹ John Francis Reilly, Carter C. Hull, and Barbara A. Braig Allen , IRC 501(c)(4) Organizations IN exempt organizations technical instruction program for 2003, page I-2, 2003 available at <http://www.irs.gov/pub/irs-tege/eotopici03.pdf> accessed on 10/03/2015.

¹²² IRC §501(c)(4), available at <https://www.law.cornell.edu/uscode/text/26/subtitle-A/chapter-1/subchapter-F/part-I> accessed on 10/03/2015.

¹²³ See Powell and Steinberg, supra note 16, p.83.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ See Reilly et al, supra note 122, p.I-4.

2.1.3. Regulation of not-for-profits in the US

As discussed earlier on the regulation of nonprofits and even generally business organizations is divided among the different states where the organization is established and the federal government. On the state level the actors are majorly Courts and the Attorney General in addition to specific boards and authorities that have relation to the organization.^{127 128}

The courts power over nonprofit organization through their power to settle accounts where they can decide issues on proper investment, appointing trustees, order corporate dissolution, and direct the framing of schemes for cy pres dispositions which allows them to save a nonprofit when their primary objective fails by amending the instrument establishing the charity.^{129 130}

The duty to enforce ‘charitable funds’ is entrusted by all states to the Attorney General through the instrumentality of court decisions and statutes.¹³¹ This power extends in some states from the power of conducting investigation as to the proper use of the charitable property to ‘bringing an action to dissolve a corporation for certain violation’¹³² where there is

Failure to exercise corporate power for a fixed number of years, abuse of corporate powers, fraud practiced on the state in procuring the franchise, failure to file an annual report for a given period of time and failure to appoint and maintain a registered agent.¹³³

¹²⁷ See Fremont-Smith, supra note 26, Page 301.

¹²⁸ For example if the nonprofit organization was working as a school, colleges or universities the board of education would be involved in the regulation while the department of health are involved in the regulation of the health care facilities.

¹²⁹ See Fremont-Smith, supra note 26, p.302.

¹³⁰ See < <http://www.irs.gov/pub/irs-tege/eotopice81.pdf> > accessed on 21/03/2015.

¹³¹ The extent and degree of the control exercised by the Attorney General varies from state to state and thus is subjective to the state under discussion.

¹³² See Fremont-Smith, supra note 26, p.307.

¹³³ Revised model Nonprofit corporation Act, §14.20,14.30(1987)

2.2. Charities and associations /Non-governmental associations/ in Ethiopia.

Ethiopia is home to many forms of social ‘informal-community based organizations’¹³⁴ like ‘*Idir*’ and ‘*Equb*’¹³⁵. The history of civil society as we know it today is fairly recent with the first civil societies to emerge being faith based.¹³⁶ It was after the 1950’s that institutions like the Red Cross entered Ethiopia. The number of NGO’s dealing with relief and aid increased after the 1973-74 and 1984-1985 famines which had devastating consequences in the country.¹³⁷ Nonprofits then shifted their focus from the provision of relief after the famines to other sectors like development while conforming to policies and rules in force at the time.¹³⁸

Today the number of NGO’s is around 4000 charities and societies which when compared to neighboring countries like Kenya¹³⁹ is extremely small.¹⁴⁰ This figure is also very showing of the limitations on the formation of NGO’s in Ethiopia where they are badly needed.

¹³⁴ NGO Law Monitor: Ethiopia, <http://www.icnl.org/research/monitor/ethiopia.html>, accessed on 16/03/2015.

¹³⁵ *Idir* is an informal association formed between neighbor who are living in a particular area where by the make contributions in money on a weekly or by weekly basis which will be used to help a resident in case of death within his/her family, to help families prepare for their children’s weeding’s etc. The *Equb* however is a saving mechanism where monetary contributions are made daily/weekly/monthly whichever is selected by the member where the members will receive in turns the amounts as if they have saved for the agreed duration of time.

¹³⁶ See NGO Law Monitor, supra note 134.

¹³⁷ Id.

¹³⁸ Dessalegn Rahmato, Akalewold Bantirgu and Yoseph Endeshaw, *CSOS/NGOs in Ethiopia: Partners in Development and Good Governance*, A Report Prepared for the Ad Hoc CSO/NGO Task Force, p.12 (2008), available at <http://www.crdaethiopia.org/Documents/CSOs-NGOs%20in%20Ethiopia%20-%20Partners%20in%20Development.pdf> accessed 16/02/2015.

¹³⁹ Kenya with a population of a 45 million people, which is less than half of the Ethiopian population of an estimated 96 million, has an estimated 76,500 plus NGO’s and Societies. Source <http://www.icnl.org/research/monitor/kenya.html> accessed 16/03/2015.

¹⁴⁰ See NGO Law Monitor, supra note 134.

2.2.1. Nonprofit regulation under Ethiopian law

There are three sets of laws in Ethiopia that govern nonprofit organizations. The Civil code of Ethiopia¹⁴¹, which provides general rules on Associations and how they are formed, the Commercial code¹⁴² and the Charities and Associations Proclamation.¹⁴³

2.2.1.1. The Civil and Commercial codes of Ethiopia on Non profits

Title III of the civil code provides rules for bodies corporate which under its Chapter 2 provides a detailed rule on what associations are and the requirements they must fulfill to qualify and stay as such.¹⁴⁴ Associations are defined by the civil code as a ‘grouping formed between two or more persons with a view to obtaining a result other than securing or the sharing of profit.’¹⁴⁵

This definition clearly makes a distinction similar to the US system between for-profit and nonprofit organizations based on whether or not the institution distributes profit and also whether their primary purpose is of making profit in which case they will be treated as traders and governed by the Commercial code¹⁴⁶ thus implying the possibility of incidental profit for associations. The civil code also provides that ‘churches, religions, associations other than the Ethiopian orthodox church shall be subject to special laws concerning them’¹⁴⁷. And if no such law exists then they would fall under the rules set for associations by the code.

¹⁴¹ Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Negarit Gazeta Extraordinary Issue, 1960.

¹⁴² Commercial code of the Empire of Ethiopia: proclamation no. 166/ 1960, Negarit Gazeta, 1960.

¹⁴³ See CSO proclamation, supra note 1.

¹⁴⁴ This title of the civil code also contains detailed rules on Endowment and trust from Article 483-544 under the chapter Property with a specific destination.

¹⁴⁵ See civil code, Supra note 141, Art. 404.

¹⁴⁶ Id, Art. 405.

¹⁴⁷ Id, Art.407.

All associations are required under the civil code to have a memorandum of association and Statutes. In case of dissolution or liquidation of the association the code clearly provides that ‘the estate of the association may in no case be partitioned among associates. And in case no such provision is provided and the general meeting has not destined the property for any other purpose the estate shall be the property of the state’.¹⁴⁸ This provision again is very similar if not identical to the US system which prohibits distribution of assets and provides the same consequence in case of not providing the destination of the property. The Ethiopian system, however, lacks clarity in saying ‘unless the general meeting validly destined it for another purpose’ as it would have been better to provide clearly that this purpose for which the property is being destined is valid only if it is transferred for the use of another association or non-profit organization.

The commercial code provides that associations may not carry on any trade.¹⁴⁹ This restriction seems to bar an association from the activities listed under Article 5 of the code.¹⁵⁰ Even though this list doesn’t include some activities which the association may take part in without being considered as a trader this is a very restrictive limitation. This activity also limits the power of Article 405 of the civil code which allows for incidental profit making but limits distribution.

¹⁴⁸ Id, Art 467.

¹⁴⁹ See Commercial code, supra note 142.

¹⁵⁰ The activities listed under article 5 of the commercial code include Purchase of movables or immovable with a view to reselling them either as they are or alteration or adaptation; Purchase of movables with a view to letting them for hire; Warehousing activities ; Exploitation of mines, including prospecting for and working of mineral oils; Exploitation of quarries not by handicraftsmen, Exploitation of salt pans; Conversion and adaptation of chattels, such as foodstuffs, raw materials or semi-Finished products not by handicraftsmen; Building, repairing, maintaining, cleaning, painting or dyeing movables not by handicraftsmen; Embanking, levelling, trenching or drilling carried out for a third party not by handicraftsmen; Carnage. of goods or persons by handicraftsmen; Printing and engraving and works connected with photography or cinematography not by handicraftsmen; Capturing, distributing and supplying water; Producing, distributing and supplying electricity, gas, compressed air including and cooling; Operating places of entertainment or radio or television stations; Operating hotels, restaurants, bars, cafes, inns, hairdressing establishments not operated by handicraftsmen and public baths; Publishing in whatever form, and in particular by means of printing, engraving, photography or recording; Operating news and information services; Operating travel and publicity agencies; Operating business as an agent, broker, stock broker or commercial ; Operating a banking and money changing business and Operating an insurance business.

It is for this reason that comments on the Draft revision of the commercial code given by the business community¹⁵¹ include comments on Article 25 and ask that it clearly limit this limitation as it is not in line with the civil code¹⁵². This problem does seem to be solved by the promulgation of the charities and societies proclamation which provides that charities and societies may make incidental profit and that any existing law that may contravene against this provision is null and void.¹⁵³

2.2.1.2. The Charities and Associations Proclamation

The charities and Associations proclamation is Ethiopia's first comprehensive law on NPO's adopted in 2009 which regulates the registration and regulation of nonprofit.¹⁵⁴ This proclamation has received a wide array of comments from the draft stage until and even after its promulgation for the obstacles it puts up against non-profits by its strict regulations and requirements.

The proclamation firstly covers two kinds of non-profits: Charities and Societies. Charities are defined by the proclamation as institutions established exclusively for charitable purposes and

¹⁵¹ Tilahun Teshome et al, Position of the Business Community on the Revision of the Commercial Code of Ethiopia, p.11,2008, available at <http://www.ethiopianchamber.com/Data/Sites/1/psd-hub-publications/position-of-the-business-community-on-the-revision-of-the-commercial-code-of-ethiopia.pdf> accessed on 11/02/2015

¹⁵² Tilahun et al suggest that Article 25/1/ be rephrased as 'Associations may not be deemed to be traders even where they carry out activities that may fall within the purview of Article 5 of this Code provided that such activities are authorized by special law.'

¹⁵³ See CSO proclamation, Supra note 1, Art.103/1/ cum Art.110.

¹⁵⁴ See NGO Law Monitor, supra note 134.

provide public benefit.¹⁵⁵ Charities are further divided into Charitable Endowment¹⁵⁶, charitable institution¹⁵⁷, charitable trust¹⁵⁸ and charitable society¹⁵⁹.¹⁶⁰

Societies are defined by Article 55 as ‘associations or persons organized on non-profit making and voluntary basis for the promotion of the rights and interests of its members and to undertake other similar lawful purposes as well as to coordinate with institutions of similar objectives.’¹⁶¹

Charities and societies are divided on the basis of its source of income, composition of membership and member’s residential status in three different forms.

- A) Ethiopian Charities or societies, which are ‘charities or societies formed under the laws of Ethiopia whose members are all Ethiopians, generate Income from Ethiopia and are wholly controlled by Ethiopians and which may not receive more than 10% of their resources from foreign sources’¹⁶²,
- B) Ethiopian Resident charities or societies, which are ‘those Charities or Societies that are formed under the laws of Ethiopia and which ‘consist of members who reside in Ethiopia and who receive more than 10% of their funds from foreign sources’¹⁶³, and last but not least

¹⁵⁵ See CSO proclamation, Supra note 1, Article 14.

¹⁵⁶ According to article 16 of the proclamation a charitable endowment is an organization by which a certain property is perpetually and irrevocably destined by donation or will or the order of the Agency for a purpose that is solely charitable.

¹⁵⁷ Article 27 Charitable Institution is a Charity formed by at least three persons exclusively for charitable purposes.

¹⁵⁸ A “Charitable Trust” is an organization by virtue of 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.

¹⁵⁹ “Charitable Society” shall mean a Society which is established for charitable purposes and A “Charity Committee” is a collection of five or more natural persons who have come together with the intent of soliciting money or other property from the public for purposes that are charitable.

¹⁶⁰ See CSO proclamation, Supra note 1, Article 15.

¹⁶¹ Id.

¹⁶² Id, art. 2/2/.

¹⁶³ Id, art. 2/3/.

C) Foreign charities which are charities ‘formed under the laws of foreign countries or which consist of members who are foreign nationals or are controlled by foreign nationals or receive funds from foreign sources.’¹⁶⁴

2.2.2. Formation Requirements

Under Ethiopian law, both Charities and societies may pursue public benefit activities as a purpose while it is only the latter that can pursue mutual benefit activities.¹⁶⁵ And if they are to pursue both public and mutual benefit activities jointly, they will be referred to as ‘charitable society’.¹⁶⁶

In the US system there is freedom to operate as nonprofit without explicitly registering with any governmental authority and in some cases even getting tax advantage.¹⁶⁷ This is however not the case in Ethiopia where associations, charities and societies regardless of their kind are required to register¹⁶⁸, the failure to do so within three month of formation is a ground for ‘cessation of the formed Charity or Society’.¹⁶⁹

As to who may be a founder of an NPO there is no explicit limitation with the exception the nationality requirement for Ethiopian charities under Article 2/2/ of the proclamation and in case of establishment of a society with federal character, which should involve members from at least 5 out of the 9 regional states.¹⁷⁰

¹⁶⁴ Id, art. 2/4/.

¹⁶⁵ See NGO Law Monitor, supra note 134.

¹⁶⁶ See Debebe et al, supra note 138.

¹⁶⁷ Lester M. Salamon and Susan L. Q. Flaherty, NONPROFIT LAW: TEN ISSUES IN SEARCH OF RESOLUTION, Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, 1996, page 10.

¹⁶⁸ See CSO proclamation, supra note 1, Article 64/2/.

¹⁶⁹ See Debebe et al, supra note 138, p. 4.

¹⁷⁰ See CSO proclamation, supra note 1, Art.57/6/.

Charities and Societies are required to submit statements of accounts, annual activity reports and bank account showing ‘the sum received and expended by the charities on a day to day basis, the context in which the receipts and expenditures took place and a record of the assets and liabilities of the charities or societies.’¹⁷¹ Foreign charities have to, in addition to meeting the other requirements, get the permission of the ministry of foreign affairs like foreign associations are required the same under the civil code.¹⁷²

2.2.3. Sources of Funding and Restriction on Activities

As discussed earlier in this section charities in addition to the nationality of their members are classified based on what percentage of their funding they receive from non-domestic sources. This differentiation between Ethiopian charities on the one hand and Ethiopian resident charities and foreign charities on the other hand has many consequences.

The first being the obvious limitation on finance. Ethiopian charities have to raise at least 90% of their funding from within the country to be considered as Ethiopian Charities. Another restriction related to the source of finance is the restriction on activities. According to the charities and societies proclamation, advocacy activities¹⁷³ are only allowed for Ethiopian charities as they are considered political.¹⁷⁴

The charities and societies proclamation stipulates that CSO’s may engage in ‘income-generating activities incidental to the achievement of their purposes after approval by the charities and

¹⁷¹ See Debebe et al, supra note 138, p. 4.

¹⁷² See CSO proclamation, supra note 1, Article 68/4/ and the civil code supra note 141, Art. 479/3/.

¹⁷³ Art 14/5/ of the charities and societies proclamation lists 5 activities limited to only Ethiopian charities. These are the advancement of human and democratic rights, the promotion of equality of nations, nationalities and peoples and that of gender and religion, the promotion of the rights of the disabled and children’s rights, the promotion of conflict resolution and reconciliation and the promotion of the efficiency of justice and law enforcement services.

¹⁷⁴ See Debebe et al, supra note 138, p.9.

societies agency, and the proceeds of which shall not be distributed among the members or beneficiaries of the charity or society and are used to further the purposes for which the charity or society was established.’¹⁷⁵ In which case it has to keep a separate set of books and accounts for the particular income-generating activity.¹⁷⁶ Many have criticized this law for the almost burdensome 90% of the capital to be raised from domestic sources.

2.2.4. Taxation of CSO’s

Unlike in the US where there are detailed rules on tax exemption of nonprofits, the charities and societies proclamation does not specify which taxes are exempted and which have to be paid.

CSO’s who deliver services and relief activity may be exempted from taxes like customs duty on imported items and CSO’s working with the aid of organizations like USAID which is formed in the US may be tax exempt because of the bilateral agreements in this regard between the countries.¹⁷⁷ Where the CSO’s is engaged in income generating activity that part of the activity may be subject to taxation while the rest of the activities like donations, members fees and grants are considered as non-deductible expenses.¹⁷⁸

2.2.5. Supervision and dissolution of CSO’s

There are different regulatory bodies that are entrusted with the supervision of CSO’s in Ethiopia. These are

The ministry of justice, as the agency accountable to the ministry, charities and societies agency, a special organ established to administer the registration, operation and dissolution of charities and societies, charity and society board, established under the agency, consisting of 7 members nominated by the government, including two from the civil

¹⁷⁵ See CSO proclamation, supra note 1, Article 103.

¹⁷⁶ See CSO proclamation, supra note 1, Article 103/2/.

¹⁷⁷ See Debebe et al, supra note 138, p.10.

¹⁷⁸ Income tax proclamation, proclamation no 286/2002, Federal Negearit Gazette, 8th year no.34, Art. 21/1-n/ (2002).

society and sector administrators, having a supervisory and advisory role in the administration of CSOs.¹⁷⁹

The dissolution of CSO may be based on the decision of the CSO itself or through the decision of the agency, when it becomes insolvent or its license is cancelled, or through the decision of the federal high court.¹⁸⁰

The proclamation provides that after the debts and liabilities have been settled the rest of the assets of the CSO will be given to a charity or society with a similar purpose or if no such charity exists to any other charity or society.¹⁸¹

A charity or society that is being dissolved may not perform activities other than those necessary for its liquidation without the authorization of the agency.¹⁸²

The US system provides a detailed list of benefits and advantages that nonprofits have in terms of tax and defines nonprofits based on this fact while the Ethiopia system defines very clearly each and every type of non-profit and provides a lesser detail on tax benefit. The two systems however drive towards the same conclusions on what NPO's can do in terms of their provisions on the non-profit making character of non-profit as well as the clear restriction of incidental profit making as well as the consequences of any profit making activity which will be taxed separately and independently of the non-profits ordinary activities. The two systems also clearly provide that upon dissolution the assets are not to be distributed among members but to be given to another not-for-profit entity.

¹⁷⁹ See Debebe et al, supra note 138, p.5.

¹⁸⁰ See CSO proclamation, supra note 1, Art.93-94.

¹⁸¹ Id, Art. 94 /1/a&b//

¹⁸² See CSO proclamation, supra note 1, Article 94.

This chapter lays the foundation that even though the US and the Ethiopia differ in legal systems they have basically the same principles on NPOs. Thus if the basics are the same we can look at the experience of the US nonprofits on how they have been able to raise funds in the competitive market that they are in as well as what options they have used with in their systems to help nonprofits survive the funding problems.

Chapter 3. NGO's doing Business

The first question to start off the discussion when considering NPO-business cooperation is why a for-profit business would enter into a partnership or a Joint venture with a nonprofit company. If the for-profit were to invest into the NPO they would not get dividend or stock or even their initial investment in case of dissolution. So why should a business even consider such an option?

There are a few answers to this question. Firstly a trending concept that is a reason for NPO-Business cooperation is corporate social responsibility. An increasing number of private companies are trying to not only get publicity from their involvement in community activities but also trying to meet their social responsibilities which gives their company an added value.¹⁸³ According to the Global Sustainable Investment Review 2012¹⁸⁴, 'at least US\$13.6tn of global professionally managed assets (i.e. nearly 22% of the total) included environmental, social and governance (ESG) considerations in their investment strategies'.¹⁸⁵

NGO's today play a great role in modern society through their activities in creating 'opportunity for the self-organization of society, preserve a unique and essential space between the for-profit sector and government and by taking on challenges that could not be covered by the private and governmental sector.'¹⁸⁶ are doing the partnership of a business with a NPO whose cause the business supports can be a great means of advertising, building ones image, brand and reputation

¹⁸³ Tadashi Yamamoto and Kim Gould Ashizawa(editors), *Corporate-NGO partnership in Asia Pacific*, 1999,page 23

¹⁸⁴2012 Global sustainable investment review available at <http://gsiareview2012.gsi-alliance.org/pubData/source/Global%20Sustainable%20Investement%20Alliance.pdf> accessed on 23/03/2015

¹⁸⁵ The Social Stock Exchange: Connecting impact companies with investors, 2015 available at <http://socialstockexchange.com/wp-content/uploads/2015/01/SSX-report2.pdf> accessed on 23/03/2015.

¹⁸⁶ Stephen Heintz, The Role of NGOs in Modern Societies and an Increasingly Interdependent World, Annual Conference of the Institute for Civil Society, 2006 available at http://www.ifce.org/pages/envirolink_Articles/5m06/Role.htm accessed on 26/03/2015.

while at the same time giving back to the community is an investment in one's self. In fact some would argue that 'a company's impact on its stakeholders is an emerging benchmark of corporate performance.'¹⁸⁷ This cooperation is also useful to the NPO by serving as a means in which it can meet its mission, as a good source of initial or continuous funding and last but not least as means to use access to 'the corporate marketing talents and skills.'¹⁸⁸

These kinds of partnerships are not only common within and amongst countries but also internationally between international organizations, NPOs and businesses. An example is the United Nations and NGO's partnership like the 'one made in June 2000 between the Exxon-Mobil oil company, the World Bank and several environmental NGO's where an agreement was made to lay oil pipelines from Chad to the coast of Cameroon and revenue from the pipeline would go in to a monitoring escrow account which would be spent for health, education and national parks.'¹⁸⁹

A change in the way nonprofits saw their source of funding came in the US due to the stagnation of the economy that occurred in the late 1970's and 80's when federal programs were suspended or cut back significantly.¹⁹⁰

The dwindling amount of donations and gifts that not-for-profits receive and leads one to question what other activities may a not-for-profit take part in. As has been discussed in chapter 1 many NGO's in Ethiopia have closed and left because of the financial requirements to involve in certain activities. While the same faith should have been faced by US NPO's in the 1970's even though

¹⁸⁷ Simon Heap, NGOs and the private sector: potential for partnerships? Occasional Papers Series Number 27, p.5. (1998), available at www.intrac.org/data/files/.../OPS-27-NGOs-and-the-Private-Sector.pdf accessed on 15/01/2015.

¹⁸⁸ Paul J. Waddell, Unlocking Profit Potential: Your Organization's Guide to Social Entrepreneurship, p. 9 (2002).

¹⁸⁹ William E. Demars, NGOs and Transnational Networks: Wild cards in World Politics, p.168 (2005).

¹⁹⁰ Dennis R. Young, New trends in the US Non-Profit Sector: Towards Market Integration? *In* The non-Profit Sector in a changing Economy, 2003, page 62.

under different circumstances they thrived through the use of existing free market system as well as the legal lee way made to support them. This chapter will explore options that may be available to nonprofits as they are today and suggest new concepts that may help NPO's in Ethiopia.

NPO's have two main options to increase their income, they can either earn their income or look for investment from others.

3.1. Earned income opportunities

Nonprofits have three basic revenue opportunities when thinking of ways in which they themselves could earn income. These are incidental profits, business venture strategies and business partnership strategies. As a business venture strategy NPO's may get involved in activities related to their mission in the provision of services, products or a distribution.¹⁹¹ In addition to collaboration to earn income, nonprofits have also a built in leeway in the form of incidental profit which can serve as a lucrative source of income. The other option is Business partnership strategies which include Joint venture, cause related marketing as well as licensing. They can do this through leveraging of their assets to attract business.¹⁹²

3.1.1. Incidental profit

One of the permitted activities which can be a great source of income for nonprofits is incidental profit. These activities being specifically permitted allow for a better and less risky way of doing

¹⁹¹ See Waddell, supra note 186, p.3.

¹⁹² Id, p.8.

business to increase money flow which is not subject to separate taxation like some of the other options that are to be suggested in this chapter.

They also have an advantage because there are no restrictions on the use of the fund, no external involvement in the form of investors seeking control and no repayment obligation like loans.¹⁹³

In the US, a great portion of the income earned by nonprofits derives from fees and charges they collected for the services they provide.¹⁹⁴ More specifically according to Salamon ‘54 percent of the revenue of NPOs in the public benefit organizations derived from earned income fees and charge.’¹⁹⁵ According to Young most of this earned income derive from ‘mission- related services’ like tuition for educational centers and charges for hospitals. which are considered incidental and a natural manifestation of an effort to achieve their mission.¹⁹⁶

When considering the limit to which incidental extent there is no clear definition. There is rather an implied limit as to when related or incidental activity ends and one of unrelated business income (herein after UBI) starts. There is no specific percentage or limit set under both US and Ethiopian law. Under US law the IRC § 513/a/ defines UBI as ‘income from a trade or business that is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the organization's tax-exempt function and that is regularly carried

¹⁹³ Caroline Williams, New trends in financing the Non-Profit Sector in the United States: The transformation of Private Capital-Reality or Rhetoric? *In the non –profit sector in a changing Economy*, OECD, page 120(2003) available at http://www.oecd-ilibrary.org/the-non-profit-sector-in-a-changing-economy_5lmqcr2k4rnx.pdf;jsessionid=1hecp583xi5s1.x-oecd-live-03?contentType=%2fns%2fOECDBook%2c%2fns%2fBook&itemId=%2fcontent%2fbook%2f9789264199545-en&mimeType=application%2fpdf&containerItemId=%2fcontent%2fserial%2f19901097&accessItemIds= accessed on 10/03/2015

¹⁹⁴ Antonella Noay and Corinne Nativel, The nonprofit sector in a changing Economy, 2003, page 64.

¹⁹⁵ Id, p.64

¹⁹⁶ Id, p. 64.

on by the organization’¹⁹⁷ This UBI is separately taxable from the tax exempt activities of the NPO.

The key word in this definition is the word substantially. If we put this together with the ‘incidental’ requirement of the law we are left with a requirement of an incidental profit that must be substantially related to the not-for-profits mission. The IRC under §513 lists activities that are not considered unrelated business activities and give examples those that are. Interest, annuities, royalties and rents from real and certain personal property are specifically excluded from the definition of UBI by §512(b). There is no need for-prior approval in the US but may lead to subsequent taxation or even loss of the exempt status of the NPO may ensue.

The charities and societies proclamation of Ethiopia allows for incidental profit but states the need for authorization by the Charities and Societies agency.¹⁹⁸ There is no list suggestive of the possible activities that may be considered incidental under Ethiopian law. This mechanism if used properly with quality goods and services could serve as a great source of income for Ethiopian non-profits.¹⁹⁹

3.1.2. For- profit subsidiaries

There is no law that prohibits possibility of establishing separate business entity and investing in them so long as the NPO’s are investors in the company and the profits of such an investment is

¹⁹⁷ IRC § 513

¹⁹⁸ See CSO proclamation, Supra note 1, Art. 103/1/.

¹⁹⁹ Care must be taken in the choice of activity to be selected as the degree of incidentally is more regulated in Ethiopia than the US as Ethiopian law requires prior approval of the plan rather than a subsequent taxation of that segment of income due care must be taken in understanding incidental profit as well as acquiring the necessary authorization.

used for the running of the nonprofit and not distributed to the members of the nonprofit.²⁰⁰

Such an activity is allowed both under the US and Ethiopian laws. The for-profit subsidiary will not be tax exempt and will have to pay all taxes like an ordinary business.

3.1.3. Social Purpose Enterprises

Entrepreneurship is a term usually associated with the for-profit sector.²⁰¹ This perception was changed in the US in the early 1980's due to the increase in interest towards nonprofit commercial ventures.²⁰²

Social purpose enterprises were defined by the Roberts foundation as 'revenue-generating businesses that are owned and operated by the nonprofit organizations with the express purpose of employing at-risk clients in the business ventures'.²⁰³ They are also called 'community- based business' and 'community Wealth Enterprises' as they operate through the creation of a business that caters to the needs of the target group in an effort to finance its activity as well as meet the mission for which it was established.²⁰⁴

According to Young this concept can even be extended beyond the above definition to include 'business ventures that simultaneously contribute direct nonprofit mission related outputs as well as revenues and mission related-employment.'²⁰⁵ A simple example could be a not for-profit

²⁰⁰ Mechai Viravaidya and Jonathan Hayssen, Strategies to strengthen ngo capacity in resource mobilization through business activities, available at [http://www.pda.or.th/downloads/strategie to strengthen full.pdf](http://www.pda.or.th/downloads/strategie%20to%20strengthen%20full.pdf) accessed on 21/03/2015.

²⁰¹ See Young, supra note 190, p.73.

²⁰² Ibid.

²⁰³ See Noay et al, Supra note 194.

²⁰⁴ See Young, Supra note 190, p. 66.

²⁰⁵ Id, page 67.

established for example with a mission of helping youths from minority groups by employing them in different posts in its structure.²⁰⁶

Social Purpose enterprises have the advantage of offering Equity in the enterprise in exchange for capital. This may a good consideration to make as the enterprise has no duty to pay back the money or pay interest. They are required to share the profit as dividend if such profits are made at the end of the year.²⁰⁷

Italy was amongst the first to regulate this sector with ‘its ‘A- and B-type social cooperatives’’ while Belgium followed with its legislation titled ‘company with a social purpose’ in 1995.²⁰⁸ In the US such an establishment, because of its profit generating characteristics, does not benefit from tax exemption like NPO’s and is taxed as UBI’s.²⁰⁹ A similar situation exists in Ethiopia as the charities and association proclamation does not prohibit the establishment of such social purpose enterprises but fails to provide the details of their regulation. One can only assume that they will be considered as profit generating and will be taxable like an ordinary business.

3.2. Business partnership strategies

Partnerships and Joint ventures between NPO’S and Businesses is one of the many solutions available to solve the problem of financing of NPO’s. NPO’s are attractive business partners because of their focus on a particular mission, which may be shared with a for-profit business or a

²⁰⁶. One example in the US is Chrysalis a not for-profit established to help homeless and low income individuals in finding and retaining employment. This not for-profit has a Social Enterprise business called Chrysalis Enterprises which provides transitional jobs for those that find it difficult to find employment.

²⁰⁷Salomon, Lester M., Leverage for Good: An Introduction to the new frontiers of Philanthropy and social investment, 63(2014).

²⁰⁸ Id, page 7.

²⁰⁹ Kerlin, Janelle A., Social Enterprise in the United States and abroad: Learning from our differences In Researching Social Entrepreneurship, ARNOVA Occasional Papers, Volume 3, page 7 available at http://www.nationalcne.org/index.cfm?fuseaction=feature.display&feature_id=141&CFID=737&CFTOKEN=90849585 accessed on 25/03/2015.

governmental institution, their man power and expertise in their mission to meet the demands of the market.

This partnership could be in the form of royalty and licensing agreements, joint ventures or consultancy agreements just to mention a few options. It is safe to say that corporations have acknowledged the value of cooperating with nonprofits. Some examples in the US include The Merck Corporation which provides scholarships funds to ‘The College Fund (UNCF)’ a nonprofit organization in addition to providing Mentorship and internship to the scholarship recipients while benefiting from having a first pick to bright students interested to work with it.²¹⁰

Another example is the American cancer society that has allowed for the use of its logo and name on Florida citrus industry products that use citrus which is a contributor to cancer prevention. This helps the NPO in teaching the benefits of citrus on the one hand and receiving payment for the endorsement at the same time. The Florida Citrus company benefits from the endorsement of such an established institution as it increases its credibility.²¹¹ In the UK not for-profit organizations like OXFAM, Save the children, Help the Aged and Amnesty International have partnered with the Cooperative bank which will issue Affinity cards which are standard cards with the added benefit that a portion of the profits off of this particular card goes to the NPO’s.²¹²

²¹⁰ See Young, *supra* note 190, p.69.

²¹¹ Id, p.70.

²¹² Hudock, Ann C, NGOs and Civil Society: Democracy by proxy, (99-100)1999.

This partnership also could be in the form of support to micro and small enterprise activities in the form of consultation for which they will receive payment from the enterprises they are consulting and generate income to sustain the NPO.²¹³

There are, however, considerations that have to be made as such partnerships are not for everyone. A NPO must be aware of the high risk in entering agreements of partnership of such a nature as it requires proper consideration of the product to which ones name is to be attached as the questionability of the product or company may bring the Nonprofit under question for neglecting its mission.²¹⁴ Thus NPO are advised to consider long term consideration rather than the immediate financial benefits of such an agreement.²¹⁵

The option of using one's brand and name to solicit funding also assumes an established NPO whose name could easily be identified to the cause it is working on thus making this option a bit harder for NPOs that are just starting out.²¹⁶ Small sized NPOs also feel they 'lack expertise and sophistication to enter in to corporate agreements'.²¹⁷

3.2.1. Program related investment /PRI/

PRIs allow foundations to make investments as 'loans or equity stakes or even loan guarantees in the hopes of regaining their investments plus a reasonable rate of return. It also allows foundations

²¹³ Richardson, Pat and Langdon, Karen, Microenterprise and Microfinance: The new kids on the Block, In *New Roles and Relevance : Development NGOs and the challenge of change*, Lewis et al ED, (178)2000

²¹⁴ See Young, supra note 190, p.71.

²¹⁵ Id.

²¹⁶ Id, p.71.

²¹⁷ Id.

to increase the amount of money available to the social sector, while simultaneously building stronger and more sustainable socially minded entities.²¹⁸

According to the IRS for an investment to qualify as a Program-related investment it must meet three requirements. Firstly it must made in order to ‘accomplish one or more of the foundation's exempt purposes’, secondly ‘the production of income or appreciation of property is not a significant purpose’, and lastly the investment should not have anything to do with ‘influencing legislation or taking part in political campaigns on behalf of candidates’.²¹⁹

Some examples of activities that an NPO may do as PRI include ‘investments in businesses in deteriorated urban areas under a plan to improve the economy of the area by providing employment or training for unemployed residents, and investments in nonprofit organizations combating community deterioration.’²²⁰

No specific regulation exists on PRI in Ethiopia. It appears from the reading of the proclamation that PRI are left to be regulated by the Charities and Societies Agency as it has the authority to authorize income generating activities.²²¹

3.2.2. Socially-responsible venture capital

Venture capitalist are financial investors who invest in a new or existing risky business in order to participation in the management of the entity and later on exit it and make profit from this transaction.²²² Socially responsible venture capitals are a form of impact investing where

²¹⁸ See<<http://www.forbes.com/sites/ashoka/2013/02/21/why-program-related-investments-are-not-risky-business> > accessed on 23/03/2015.

²¹⁹ See< <http://www.irs.gov/Charities-&-Non-Profits/Private-Foundations/Program-Related-Investments>> accessed on 23/03/2015.

²²⁰ Id.

²²¹ See CSO proclamation, supra note 1, Art.103/1/.

²²² See Williams, supra note 193, page 124.

‘Investment is made in to an organization with the intention of making a social or environmental impact as well as a financial return.’^{223 224}

3.2.3. Social Impact Investment tools

This category of investment tools is made up of existing mechanisms that already exist in the market which with a little tweaking can serve as a great source of finance for NPO’s and their social enterprises.

A. Loan: Loans have been used for many years to finance investment. NPO’s may find it appropriate to consider loans for implementing or creating of a program ‘where they expect returns from the borrowed fund exceed the cost of borrowing’ and which they may use to attract more funds.²²⁵ This requires the establishment of a fund with lower interest rate or may be banks that offer lower rate of interest to encourage NPO’s. This is going to increase business for banks on the one hand while helping the development of social-impact enterprises.

B. Credit Enhancements: Social ventures are relatively risky thus many are wary of the surrounding circumstances before investing in to these endeavors.²²⁶ It would be very encouraging for such investors to receive not only loans but also various kinds of inducements attached to the loan. These inducements could be as guarantees in the form

²²³ Global Impact Investing Network, available at <http://www.thegiin.org/cgi-bin/iowa/resources/about/index.html> accessed on 22 March 2015.

²²⁴ Venture Capitalism is not well developed in Ethiopia. Thus in the absence of proper frame work and regulation on venture capital in general Socially responsible venture capitals may be difficult to implement.

²²⁵ See Hudock, *supra* note 212, p.102.

²²⁶ See Salamon, *supra* note 207, p.58.

commonly known as Credit enhancement. They could be given in the form of a loan insurance program or surety bonds just to mention a few.²²⁷

C. Social Impact bonds/SIB/: is a financing mechanism where an investor receives payment in the form of initial investment plus interest if ‘a program funded by SIBs achieves successful outcome.’²²⁸ These bonds are issued by the government thus requiring ‘Strong government leadership, ways in which the project could be scaled, data on potential benefits to be earned from investing in such a project, availability of data to measure outcome as well as safe guards against unintended adverse consequences.’²²⁹ The investors also must do their due diligence as in any investment but to a higher degree in SIBs to check the track record of the service provider and management, acquiring accurate financial and social data on the workings of the service provider and also having a way in which they can make suggestions during the course of the project are very necessary. These kinds of bonds require a lot of data collection and research and indirectly the establishment of a center or institution that has these information’s gathered and ensures their accuracy. A recent phenomenon in the US, SIB are called ‘Pay-for-Success’. They were first adopted by the state of New York in 2012 by capital advanced by for-profit companies than non-profits.²³⁰ For Ethiopia even though there is a market for SIB’s, care must be taken in investing in them because of absence of accurate and reliable data on service providers to warrant such an investment. This problem may be solved if such an activity would be

²²⁷ Benjamin H. Mandel, Donald Morgan, and Chenyang Wei ,The Role of Bank Credit Enhancements in Securitization ,FRBNY Economic Policy Review,2012 available at <http://www.newyorkfed.org/research/epr/12v18n2/1207mand.pdf>

²²⁸ Jane Hughes and Jill Scherer, Foundations for Social Impact Bonds: How and Why Philanthropy Is Catalyzing the Development of a New Market, page 9 available at <http://www.socialfinanceus.org/sites/socialfinanceus.org/files/Foundation%20for%20Social%20Impact%20Bonds,%202014.pdf> accessed on 25/03/2015.

²²⁹ Id, p.9.

²³⁰ See Salamon, supra note 207, p.70.

included in to the powers of the charities and society's agency which already gets a lot of reports from NPO's and has a duty to 'collect, analyze and disseminate information'.²³¹

These kinds of additional offers if made by the government, banks and insurances will not only help the NPO's and Social impact organizations who are trying to do business but also bring additional business to banks and insurance companies.

3.3. New Frontiers to finance NPO's

Due to the increasing competition and decrease in funding new actors and tools are now available to help raise funds and make Non-profit sector sustainable.

Capital Aggregators

One of the first actors are social impact capital aggregators which are 'organizations that assemble capital for ultimate investment in social-purpose organizations.'²³² Capital Aggregators were developed in the 1960's in the US with 'supportive federal tax and other policies aimed to encourage the flow of investment capital in to low income housing and community redevelopment.'²³³

The Hybrids

There are two new business forms that have emerged with the attributes of a company and also the characteristics of NPO's. These are Low-Profit Limited Liability Company (L3C) and 'The Benefit and Flexible Purpose Corporations'.

²³¹ See CSO proclamation, supra note 1, Art. 6/c/.

²³² See Salamon, supra note 207, p.27.

²³³ Id, p.28.

L3C are a fairly new US for-profit/nonprofit hybrid which has the characteristics of a limited liability company form taking the limited liability and pass-through taxation benefits²³⁴ of a traditional LLC as well as the social benefits of a nonprofit organization.²³⁵

Another form of hybrids are Benefit corporations which are a new set of corporations that are ‘obliged to create a material, positive impact on society and the environment and to report on its overall social and environmental performances as vetted by an independent third-party standard.’²³⁶

Non-profit Capital Market

According to this concept ‘the funders of the NPOs view themselves as investors in the non-profits which are valued on the basis of the social value, the various kinds of grants and loan instruments used to finance these investments where the investors manage a portfolio of social investment.’²³⁷

Social impact secondary Markets

These are institutions that ‘purchase the loans originated by capital aggregators refreshing the capital available to the capital aggregators so they can make additional loans.’²³⁸ They do this through the use of ‘securitization which bundles the loans in to packages and use them as collateral against which to issue bonds on the capital market.’²³⁹ They work in the regular capital market

²³⁴ Jill Horwith and Rachel Culley, *Profit v. Purpose: Hybrid companies and the charitable dollar*, Law & Economics Working Papers Article 48 2014 available at http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1158&context=law_econ_current accessed on 23/03/2015//.

²³⁵ Marc J. Lane, *Social Enterprises: A New Business Form Driving Social Change*, The young Lawyer, Vol. 16 No. 3, available at http://www.americanbar.org/publications/young_lawyer/2011-12/december_2011/social_enterprises_new_business_form_driving_social_change.html accessed on 23/03/2015

²³⁶ Id.

²³⁷ See Young, supra note 190, p. 74.

²³⁸ See Salamon, supra note 207, p.34.

²³⁹ See Salamon, supra note 207, p.61.

of the country. In the US such a task is performed by entities like the Federal National Mortgage association which is more commonly known as Fannie Mae.²⁴⁰

Social stock exchange/SSX/

This concept brought the stock exchange in to the ambit of social impact investment. Social Stock exchanges provide a meeting point for the dispersed investors who have an interest in social impact investment.²⁴¹ These are full fledged stock markets that with impact investors on the one hand and social enterprises on the other. The first country to have a social stock market was the UK in 2013 and SSE's have since spread to Canada, Singapore, Brazil and others.²⁴²

A simpler starting point can be the establishment of an objective specific exchange like the Chicago Climate Exchange which allowed companies to achieve emission reduction at a cheaper price to get tradable credits that they can easily sell through the exchange. Such an exchange is allowed at the international level by the Kyoto Protocol to which Ethiopia is also a party.²⁴³

Quasi-Public investment funds

As the name may imply Quasi public investment funds are funds created by public sector organizations that aim to help fund social-impact capital investment.²⁴⁴ An example can be the International Finance Corporation (ICF), an affiliate of the World Bank, created to stimulate private business in developing countries provides a social impact investment.²⁴⁵ An example of the ICF has provided funding to 23 private schools in Kenya with 300,000\$ and provided 113

²⁴⁰ Fannie Mae is a government sponsored enterprise which buys federally guaranteed home mortgages from commercial banks and savings and loans to help the investors reinvest their money. (Lester M. Salamon, *Leverage for Good: An introduction to the new frontiers of Philanthropy and social investment*, p.34/2014)

²⁴¹ See Salamon, *supra* note 207, p.36-37.

²⁴² Danielle Logue and Markus Hollerer, Social stock exchanges – do we need them? Available at <http://theconversation.com/social-stock-exchanges-do-we-need-them-35898> accessed on 23/03/2015.

²⁴³ See Salamon, *supra* note 207, p.36.

²⁴⁴ See Salamon, *supra* note 207, p.39.

²⁴⁵ *Id.*

others with advisory support.²⁴⁶ ICF and similar investors who want to help small and medium – sized enterprises with social impact can be a great source of funding to NPO's and their subsidiaries. It is not only multinational development banks that can create this kinds of funds. The government of the UK has dedicated proceeds from the UK lottery and the proceeds of long dormant and unclaimed bank accounts to create a quasi-public social investment fund called 'Big Society Capital'.²⁴⁷

In addition these financial mechanisms which may be used to expand the source of income for non-profits different actors like Enterprise Brokers and Capital Builders have also emerged alongside these entities.²⁴⁸

NPO's today have adopted to the changes on the market and created an alliance of sorts with the business sector. This cooperation seems to be a good one by serving as a great source of revenue for the NPO sector and their subsidiaries or even social impact enterprises. The different kinds of mechanisms that can be used to generate income are many but there feasibility under different systems legally, economically and socially should be seriously considered.

²⁴⁶ Id.

²⁴⁷ Id.

²⁴⁸ Id. P.26.

Chapter 4. Recommendations and Conclusion

Ethiopia has been criticized by both scholars and international organizations for its proclamation passed in 2009 to regulate the activities of Charities and Societies in Ethiopia. This proclamation as discussed in Chapter 2 has many provisions that are considered to be barriers against entry in to the NPO sector in particular in relation to Advocacy related activities. A lot has been said about this problem and it has been the focus of this thesis to find and recommend ways in which NPO's in Ethiopia may be able to meet the 90% domestically. The options suggested can also be used by the other kind of NPOs in Ethiopia to increase their income so as to better meet their mission.

In an effort to fully understand the options available to NPO's an analysis was made on how the NPO sector in the US has been able to not only sustain itself but also thrive. In this regard it was found that even though the US and Ethiopia follow different legal systems²⁴⁹ they have similar basic principles when it comes to NPO's. The two systems share the same principles on the nonprofit making nature²⁵⁰ of NPO's and allowing of incidental profit, on the non-distribution of profits and asset, on the consequence of the breach of the nonprofit making and non-distribution requirement would lead to taxation or even loss of exempt status. This is not however to say the two laws go about addressing the issues in a similar manner.

The US system is significantly more developed on its provision of different types of NPO's, the level of detailed regulation of these various institutions as well as the willingness to continue to create a place for new kinds of organizations. I would argue that it is this versatility of the US

²⁴⁹ Generally the US follows the common law legal system while Ethiopia is a predominantly civil law legal tradition with the exception of the precedent setting power of the cassation division of the supreme court of Ethiopia.

²⁵⁰ No profit making in this sense is to refer to the fact that NPO's in both legal systems should focus mainly on their mission and any incidental profit they make should be incidental to the achievement of their mission.

system to accommodate the evolution of NPO's in form and shape that has led to the remarkable size it has grown to today.

Lessons should be drawn from the US system has developed concepts beyond the ordinary incidental profit like PRI and Social enterprises which receive different treatment from NPO's and for-profits. The possibility of having such entities and ways in which NPO's can try to achieve their mission while at the same time earning income making them more sustainable.

Ethiopian law provides the bare minimum on incidental profit and involvement of business which could have been a great source of income for NPO's. Some guide line should be provided as to what things may fall with in this category. The NGO's should be trained on how to use their existing resources properly to earn income making themselves more sustainable. Such options should be addressed openly through trainings and consultations with NPO's. Clear laws must also exist that define the tax benefits an NPO receives in Ethiopia generally.

Additionally the existing system of NPOs in Ethiopia limited to associations, charities and societies and foundations will not be able to meet the gap that exists between what the government and what the business sectors are can provide.

The for-profit sector in itself cannot address this problem because of the limited forms of business organizations recognized under the commercial code of Ethiopia. This code was enacted in 1960 and has not seen any revision. The commercial code of Ethiopia under 212 provides for six kinds of business organizations: ordinary partnership, joint venture, general partnership, limited Partnership, Share Company and private limited company. These business organizations are considered to undertake trade as defined under article 5 of the commercial code and thus distinguished from associations and charities which are excluded from undertaking trade and for-

profit activity by the code. Even though this seems to have been modified by the charities and associations proclamation, which provides for incidental profit and involvement in income generating activities, it does not provide for business forms that integrate the NPO and business aspect together. It also does not provide clear rules on the regulation of the income generating activities but only provides that it shall be done by the authorization of the charities and societies agency.

The for-profit sector of Ethiopia will not make a sustainable investment in the areas where NPO's should have worked because the target group it has to address will not be able to pay significant amounts for the goods and services provided to it. The government also has limitations in terms of resource and manpower to address some of these issues. These factors create a gap in which much work can be done in Ethiopia by NPO's.

Amongst the different sources of Income suggested in chapter 3 Incidental profit seem to be the best place to start as they are less risky and easy to start. The existing NGO's as well as future ones should try to consider ways in which the NGO could get income that can sustain it through the course of its work to achieve its mission. Thus the understanding of NPO's as sources of research work, surveys and aid should be significantly be changed for example in to nonprofit schools, hospitals, training centers, youth clubs .

The Charities and Societies Agency has to make clear regulations on what activities are considered incidental, what may be considered as UBI and also on the issue of program related investment.

As a growing economy the value of Corporate Social responsibility should be promoted with in the society. A society conscious of the consequences of a product or a service on the issues like

the environment, health and others will push the business sector to consider how it should built its image in the society and to the possible collaboration in different form with the NPO sector.

Addition of different kinds of bonds, loans and other debt securities with modern concepts like securitization and credit enhancement will not only serve as an option to NPOs to increase income but also help the government as well as banks and insurance companies earn more profit.

The government of Ethiopia should also consider the provision of incentives to small and medium -sized enterprises that work to solve social problems whether in the form of a for-profit business or a social impact enterprise.

The gaps in the system that exist today should not be seen as a road block but rather an opportunity to build a bigger better system. This thesis can be used as a starting point for further research in to the different options discussed and suggested. With the amendment of commercial code, to include different form of organizations, as well as proper regulation of details of income generation and program related investment of NPO's, a system can be successfully developed where NPO's can achieve their mission sustainably and the growing business sector can 'have its cake and save the whales too.'

Bibliography

Cases

- In Re Los Angeles county Pioneer society (40 Ca.2d 852, 257 P.2d 1)
- Branch Ministries, Inc. vs. Commissioner, (40F.Supp.2d 15(D.D.C.1999)

Statutes

- Charities and societies proclamation no. 621/2009, 15th year no.25, Federal Negarit Gazeta, (2009).
- Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Negarit Gazeta Extraordinary Issue, (1960).
- Code of Federal Regulations, 26 CFR 601.101.
- Commercial code of the Empire of Ethiopia: proclamation no. 166/ 1960, Negarit Gazeta, (1960).
- Income tax proclamation, proclamation no 286/2002, Federal Negarit Gazette, 8th year no.34, (2002).
- Internal Revenue Code of 1986.
- Revised model Nonprofit corporation Act, §14.20,14.30(1987).

Books

- American Bar Association, Model Nonprofit Corporation Act: Official Text with Official Comments and Statutory Cross-references Adopted August 2008, 3rd ed. Chicago: § 1.40. (2009)
- Amnesty international, Stifling human rights work: the impact of civil society legislation In Ethiopia, (2012)
- Anheier K. Helmut and Salamon M. Lester, The Non-Profit Sector in Comparative Perspective, in The Non-profit Sector: A research Handbook, (Powell et al ed., 2nd ed., 2006).
- Antonella Noya and Corinne Nativel, The nonprofit sector in a changing Economy, OECD, (2003)

- Fishman J Peter Dobkin Hall, A Historical Overview of Philanthropy, Voluntary Associations, and Nonprofit Organizations in the United States, 1600–2000, in the non-profit Sector a research hand book, (Powell et al eds., 2nd ed, 2006).
- Peter Frumkin, On Being Nonprofit: A conceptual and Policy Primer, page 4, 2002. James and Schwarz Lynn Lawry ed., Paul J. Waddell, Unlocking Profit Potential: Your Organization's Guide to Social Entrepreneurship, (2002).
- Guide to Nongovernmental Organizations for the Military: A primer for the military about private, voluntary, and nongovernmental organizations operating in humanitarian emergencies globally, 26(2009), <http://www.fas.org/irp/doddir/dod/ngo-guide.pdf> accessed on 15/02/15.
- Stephen, Non-profit Organizations: Cases and Materials, 38(2nd ed., 2000).
- Hansmann, Henry, Economic Theories of Non-profit Organizations, In the Non-profit Sector: A Research Handbook, 28-29 (W. W. Powell (ed.), 1st ed., 1987).
- Helmut Anheier, Non-Profit Organizations: Theory, Management, Policy, (2005).
- Henry Hansmann, The rationale for exempting nonprofit organizations from corporate taxation In Nonprofit organizations: Cases and materials, Fishman and Schwarz, 2nd ed., 2000.
- Hudock Ann C, NGOs and Civil Society: Democracy by proxy, 1999.
- Stillman B. Grant, NGO Law and Governance: A Resource Book, (2006).
- Powell W. Walker and Steinberg Richard (ed.), The Non-profit Sector: A research Handbook, (2nd ed. 2006).
- Richardson, Pat and Langdon, Karen, Microenterprise and Microfinance: The new kids on the Block, In New Roles and Relevance Vladislav Valentinov, The Economics of the Non-Distribution Constraint: A Critical Reappraisal, (September 2007) Annals of Public and Cooperative Economics 79:1 2008.
- William E. Demars, NGOs and Transnational Networks Wild cards in World Politics, (2005).
- Wojciech Sokolowski and Lester Salamon, The United States in Global civil society: Dimensions of the nonprofit sector by Salmon et al, (1999).
- Development NGOs and the challenge of change, Lewis et al ED, 2000
- Salamon, Lester M., Americas Nonprofit sector: A primer, 1992.

- Salamon, Lester M., Leverage for Good: An Introduction to the new frontiers of Philanthropy and social investment, (2014).

Law reviews. Journals and Articles

- Benjamin H. Mandel, Donald Morgan, and Chenyang Wei, The Role of Bank Credit Enhancements in Securitization, FRBNY Economic Policy Review, 2012 available at <http://www.newyorkfed.org/research/epr/12v18n2/1207mand.pdf>.
- Brice S. McKeever and Sarah L. Pettijohn, The Nonprofit Sector in Brief 2014: Public Charities, Giving, and Volunteering, 2014 available at <http://www.urban.org/UploadedPDF/413277-Nonprofit-Sector-in-Brief-2014.pdf> accessed on 15/03/2015.
- Caroline Williams, New trends in financing the Non-Profit Sector in the United States: The transformation of Private Capital-Reality or Rhetoric? *In the non –profit sector in a changing Economy*, OECD, 2003.
- Corry Olaf, Defining and Theorizing the Third sector, R. Taylor (ed.), *Third sector research*, 11(2010).
- Dennis R. Young, New trends in the US Non-Profit Sector: Towards Market Integration? *In The non-Profit Sector in a changing Economy*, 2003.
- Department of the Treasury Internal Revenue Service, Tax on Unrelated Business Income of Exempt Organizations, Publication 598, (Rev. January 2015).
- Dessalegn Rahmato, Akalewold Bantirgu and Yoseph Endeshaw, CSOs/NGOs IN ETHIOPIA: Partners in Development and Good Governance, A Report Prepared for the Ad Hoc CSO/NGO Task Force, 2008, available at <http://www.crdaethiopia.org/Documents/CSOs-NGOs%20in%20Ethiopia%20-%20Partners%20in%20Development.pdf>
- Human rights watch, World Report 2015: Ethiopia, (29 January 2015), <http://www.refworld.org/docid/54cf83aaa.html> (accessed 14 February 2015).
- James R. Hines Jr. , Non-Profit Business Activity and the Unrelated Business Income Tax, in *Tax Policy and the Economy*, Vol. 13 (1999), p. 60 available at <http://www.jstor.org/stable/20061867> accessed on 26/01/2015.

- Jane Hughes and Jill Scherer, Foundations for Social Impact Bonds: How and Why Philanthropy Is Catalyzing the Development of a New Market, available at <http://www.socialfinanceus.org/sites/socialfinanceus.org/files/Foundation%20for%20Social%20Impact%20Bonds,%202014.pdf> accessed on 25/03/2015.
- Jill Horwith and Rachel Culley, Profit v. Purpose: Hybrid companies and the charitable dollar, University of Michigan Law School University of Michigan Law School Scholarship Repository Law & Economics Working Papers Article 48 2014 available at http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1158&context=law_econ_curren accessed on 23/03/2015//.
- John Francis Reilly, Carter C. Hull, and Barbara A. Braig Allen , IRC 501(c)(4) Organizations IN exempt organizations technical instruction program for 2003, 2003 available at <http://www.irs.gov/pub/irs-tege/eotopici03.pdf> accessed on 10/03/2015.
- Kendra Dupuy, James Ron and Aseem Prakash, Reclaiming Political Terrain: The Regulatory Crackdown on Overseas Funding for NGO's, (2010) available at <http://www.cide.edu/publicaciones/status/dts/dtei%20232.pdf> accessed on 14/02/2015.
- Kerlin, Janelle A., Social Enterprise in the United States and abroad: Learning from our differences *In Researching Social Entrepreneurship*, ARNOVA Occasional Papers, Volume 3, available at http://www.nationalcne.org/index.cfm?fuseaction=feature.display&feature_id=141&CFID=737&CFTOKEN=90849585 accessed on 25/03/2015.
- Lester M. Salamon and Susan L. Q. Flaherty, Nonprofit law: ten issues in search of resolution, Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project, 1996.
- Lester m. Salamon, Non-profit America: an overview, in national academy of sciences workshop on NSF survey of non-profit R and D Washington, D.C., (Slide 6, June 30, 2014).
- Marion R. Fremont-Smith, Governing Non-Profit Organization: Federal and State Law Regulation, The International Journal of Not-for-Profit Law, Volume 7, Issue 2, February 2005 http://www.icnl.org/research/journal/vol7iss2/rev_4.htm accessed 12/03/2015.

- Mechai Viravaidya and Jonathan Hayssen, Strategies to strengthen NGO capacity in resource mobilization through business activities, available at http://www.pda.or.th/downloads/strategie_to_strengthen_full.pdf accessed on 21/03/2015.
- Paul Arnsberger, Melissa Ludlum, Margaret Riley, and Mark Stanton, A History of the tax-exempt Sector: An SOI Perspective, in the Statistics of income Bulletin, 2008.
- Salamon, Lester m. And Helmut k. Anheier, The international classification of non-profit organizations: ICNPO-revision 1, in working papers of the Johns Hopkins comparative non-profit sector project, (no. 19, 1996).
- Simon Heap, NGOs and the private sector: potential for partnerships? Occasional Papers Series Number 27, 1998, available at www.intrac.org/data/files/.../OPS-27-NGOs-and-the-Private-Sector.pdf accessed on 15/01/2015.
- State taxation and Nonprofit Organizations, North Carolina Department of Revenue, available at <http://www.dor.state.nc.us/publications/nonprofit2008.pdf> accessed on 08/03/2015.
- Tadashi Yamamoto and Kim Gould Ashizawa (editors), Corporate-NGO partnership in Asia Pacific, 1999.
- Tilahun Teshome et al, Position of the Business Community on the Revision of the Commercial Code of Ethiopia, ,2008, available at <http://www.ethiopianchamber.com/Data/Sites/1/psd-hub-publications/position-of-the-business-community-on-the-revision-of-the-commercial-code-of-ethiopia.pdf> accessed on 11/02/2015 .

Internet sources

- 2012 GLOBAL SUSTAINABLE INVESTMENT REVIEW available at <http://gsiareview2012.gsi-alliance.org/pubData/source/Global%20Sustainable%20Investement%20Alliance.pdf> 184 accessed on 10/03/2015.
- Carapico Sheila, NGO'S, INGOS, GO-NGO's AND DO-NGO's: Making sense of non-governmental organizations, Middle East report, in critiquing NGOs: assessing the last

decade (no.214, 2000), <http://www.jstor.org/stable/1520187> accessed on 26/01/2015 16:07.

- Danielle Logue and Markus Hollerer, Social stock exchanges – do we need them? Available at <http://theconversation.com/social-stock-exchanges-do-we-need-them-35898> accessed on 23/03/2015.
- <http://ali.state.al.us/docs/Nonprofit-Corp-Act-8-2008.pdf> and <http://nonprofitorganizations.uslegal.com/state-laws-governing-nonprofit-corporations/> accessed on 20/03/2015.
- http://www.bls.gov/opub/ted/2014/ted_20141021.htm accessed on 26/03/2015.
- <http://www.businessdictionary.com/definition/philanthropy.html> accessed on 15/02/15.
- <http://www.forbes.com/sites/ashoka/2013/02/21/why-program-related-investments-are-not-risky-business/> accessed on 23/03/2015.
- <http://www.hg.org/nonprofit-organizations.html> accessed on 20/03/2015.
- <http://www.irs.gov/pub/irs-tege/eotopice81.pdf> accessed on 21/03/2015.
- <http://www.statista.com/statistics/268357/changes-in-the-number-of-ngos-worldwide-since-1948/> accessed 15/02/2015.
- <https://www.law.cornell.edu/uscode/text/26> accessed on 11/03/2015.
- https://www.law.cornell.edu/wex/non-profit_organizations accessed on 11/03/2015.
- <https://www.rotary.org/myrotary/en/learning-reference/about-rotary/history-rotary-international> accessed on 15/02/2015.
- Jane Hughes and Jill Scherer, Foundations for Social Impact Bonds: How and Why Philanthropy Is Catalyzing the Development of a New Market, available at <http://www.socialfinanceus.org/sites/socialfinanceus.org/files/Foundation%20for%20Social%20Impact%20Bonds,%202014.pdf> accessed on 25/03/2015.
- Marc J. Lane, Social Enterprises: A New Business Form Driving Social Change, The young Lawyer, Vol. 16 No. 3, available at http://www.americanbar.org/publications/young_lawyer/2011-12/december_2011/social_enterprises_new_business_form_driving_social_change.html accessed on 23/03/2015.
- Mercer, E., Legal Basis for NPO Regulation, available at: http://www.muridae.com/nporegulation/legal_basis.html accessed on 20 March 2015.

- Monzer Kahf, Role of Waqf in sustainable society: Kinds and Objective of Islamic Waqf, (December 2014), <http://www.onislam.net/english/shariah/contemporary-issues/islamic-themes/452483-type-goals-islam-waqf-endowment-finance-economy.html> accessed on 15/02/15.
- NGO Law Monitor: Ethiopia, <http://www.icnl.org/research/monitor/ethiopia.html>
- Non-Governmental Organizations: Doing the Work Governments Can't or Won't Do, (2011), <http://ngos.org/difference-between-ngos-and-non-profits/> accessed on 07/02/2015
- Salamon, Lester And Susan I. Q. Flaherty, Non-profit law: ten issues in search of resolution, (Lester m. Salamon and Helmut k. Anheier eds,1996), http://ccss.jhu.edu/wp-content/uploads/downloads/2011/09/cnp_wp20_1996.pdf
- Stephen Heintz, The Role of NGOs in Modern Societies and an Increasingly Interdependent World, Annual Conference of the Institute for Civil Society,2006 available at http://www.ifce.org/pages/envirolink_Articles/5m06/Role.htm
- The Social Stock Exchange: Connecting impact companies with investors, 2015 available at <http://socialstockexchange.com/wp-content/uploads/2015/01/SSX-report2.pdf> accessed on 23/032015.
- Understanding International NGOs and Non-profits, <https://www.maxwell.syr.edu/career.aspx?id=202> accessed on 07/02/2015.
- Understanding Nonprofit Status and Tax Exemption, <http://ctb.ku.edu/en/table-of-contents/finances/managing-finances/nonprofit-status-tax-exemption/main> accessed on 05/03/2015.