

Nonprofit Law in Ethiopia

Current as of September 2019

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I. SUMMARY

The Federal Democratic Republic of Ethiopia has a federal government system and follows the civil law tradition.

On March 12, 2019, the government of Ethiopia enacted a new law on civil society organizations (CSOs), the Organization of Civil Societies Proclamation No. 1113/2019 (CSO Proclamation). The CSO Proclamation replaces the Proclamation of Charities and Societies No. 621/2009 (2009 Proclamation). Under the CSO Proclamation, directives and regulations issued in relation to the 2009 Proclamation will remain in effect for one year, to the extent that they do not conflict with the provisions of the CSO Proclamation.

Given the relative newness of the CSO Proclamation, some of its provisions have not yet been fully implemented. This Note seeks to provide an overview of the CSO Proclamation's framework for not-for-profit CSOs in Ethiopia, with the understanding that the rules and practices associated with CSOs will continue to develop and solidify as the government begins to fully implement the CSO Proclamation and

issue clarifying regulations and directives. Accordingly, foundations should check with local experts to obtain updated information before engaging in international grantmaking.

A. TYPES OF ORGANIZATIONS

According to the CSO Proclamation, a “civil society organization (CSO)” is any non-governmental, non-partisan, not-for-profit entity established by two or more persons on a voluntary basis and registered to carry out any lawful purpose (CSO Proclamation Article 2/1). There are many sub-types of CSOs, including local and foreign CSOs, professional associations, mass-based societies, consortia, and charitable entities, though the sub-types appear to be subject to largely the same rules relating to inurement, proprietary interest, dissolution, activities, and taxes, as discussed below.

In addition to the “CSO” as defined by the CSO Proclamation, there are other forms of organizations, including trade unions, religious institutions, and traditional or cultural institutions such as Edir and Equb. These organizations fall outside the scope of this Note, as they are not typically recipients of significant funding from US foundations.

B. TAX LAWS

CSOs are exempt from income tax on grants and membership fees, but CSOs must pay income taxes on economic activities. CSOs may also be exempt from customs duties if they meet certain criteria. Additionally, CSOs are subject to either the VAT or the turnover tax based on the value of their annual transactions.

There are no special rules related to taxes for charitable entities.

II. APPLICABLE LAWS

Federal Laws, Directives, and Regulations

- Constitution of the Federal Democratic Republic of Ethiopia (1994)
- Civil Code Proclamation No. 165/1960, Articles 404-482
- Civil Society Organizations Proclamation No. 1113/2019
- Charities and Societies Council of Ministers Regulation No. 168/2009
- A Directive to Provide for the Establishment of Consortiums of Charities and Societies No. 1/2010
- A Directive to Determine the Operational and Administrative Costs of Charities and Societies No. 2/2011
- A Directive to Provide for the Establishment and Administration of Charity Committee No. 3/2011
- A Directive to Provide for the Establishment of a Charitable Endowment, Charitable Trust and Charitable Institution No. 4/2011
- A Directive to Provide for Public Collection by Charities and Societies No. 5/2011
- A Directive Issued to provide for the Liquidation, Transfer and Disposal of the Properties of Charities and Societies No. 6/2011
- A Directive to Provide for Income Generating Activities by Charities and Societies No. 7/2011

- A Directive to Provide for the Submission of Audit and Activity Reports of Charity and Society or Charity Committee No. 8/2011
- Directive to provide for the Provision of Charitable Services through Cost Sharing No. 9/2011
- Income Tax Proclamation No. 979/2016
- Income Tax Regulation No. 410/2017
- Customs Proclamation No. 622/2009
- Value Added Tax Proclamation No. 285/2002
- Turnover Tax Proclamation No. 308/2002
- Chamber of Commerce and Sectorial Association Proclamation No. 341/2003
- Labor Proclamation No. 377/2003

Regional Laws

- Amhara National Regional State Charities and Societies Registration and Administration Proclamation No. 194/2012 [1]
- Charities and Societies Registration and Administration Determination, Council of Regional Government Regulation No. 117/2013

As of September 2019, the Government of Ethiopia is preparing a draft regulation to be issued under the authority of the 2019 CSO Proclamation. The regulation will cover a range of issues, including: the registration of CSOs, support provided by a new administrative agency—the Agency for CSOs—to CSOs regarding their establishment, the effects of registration, administration of CSOs’ resources and property, fundraising and other income generation by CSOs, and requirements for international staff of CSOs.

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

The CSO Proclamation governs CSOs that work in more than one region in Ethiopia. An organization operating in only one region is governed by the laws of that region if the region has adopted its own CSO laws, or by the relevant provisions in the 1960 Civil Code if the region has not adopted its own CSO laws. [2] Currently, only the Amhara Regional State has enacted a CSO law. [3] This Note will not discuss the relevant provisions of the 1960 Civil Code, as most formally registered CSOs operate at the multi-regional level and are thus governed by the CSO Proclamation.[4]

According to the CSO Proclamation, “civil society organization” is an umbrella term that encompasses several sub-types. The Proclamation provides that a “CSO” is a non-governmental, non-partisan, not-for-profit entity established by at least two or more persons on a voluntary basis and registered to carry out any lawful purpose (CSO Proclamation Article 2/1). CSOs include local and international non-governmental organizations (NGOs), professional associations, mass-based societies, and consortia of organizations (CSO Proclamation Article 2/1). “Foreign” organizations (those formed under foreign countries’ laws and registered to operate in Ethiopia) follow largely the same rules as “local” organizations (those formed under the laws of Ethiopia by Ethiopians and foreigners resident in Ethiopia), with some key differences in terms of requested materials and timeframes for registration, as well as restrictions on political activities, as discussed below.

The CSO Proclamation also defines a few sub-types of CSOs that are charitable in nature, such as “charitable endowments,” “charitable trusts,” and “charitable committees.” A “charitable endowment” is a CSO by which property is perpetually and irrevocably destined by donation, money or will for a purpose that is solely charitable (CSO Proclamation Article 21/1). A “charitable trust” is a CSO established by an instrument that designates a specific property solely for a charitable purpose, and is administered by trustees in accordance with the founding instrument (CSO Proclamation Article 31). Finally, a “charitable committee” is a group of five or more persons who have gathered with the intent of soliciting money or other property from the public for a charitable purpose (CSO Proclamation Article 48). These charitable organizations follow most of the same rules as other CSOs but are subject to some unique requirements related to registration, structure, and governance, set forth in Articles 21-55 of the CSO Proclamation. This Note will highlight differences in these organizations’ obligations in the relevant sections, below.

The CSO Proclamation does not cover religious institutions, traditional or cultural institutions such as Edir and Equb, or organizations formed under other laws such as trade unions and cooperatives. As noted above, these organizations are outside the scope of this Note.

B. PUBLIC BENEFIT STATUS

Beyond the sub-types of CSOs that are charitable in nature, as described in the previous section, there is no special legal form for organizations with a public benefit purpose, nor does the CSO Proclamation define any special benefits for CSOs working in the public interest. However, certain provisions of the Proclamation indicate that the government may issue regulations or directives that could benefit CSOs engaged in public interest work. [5]

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

All CSOs are prohibited from distributing profits obtained from business or investment activities to members or employees of the organization (CSO Proclamation Articles 61/4, 63/1/b, and 64/4). Additionally, members of the board or executive committee of an organization may not be employed in that organization as an officer or ordinary employee (CSO Proclamation Article 65/2), and persons who are related to officers of an organization may not be board members (CSO Proclamation Article 23/4). These two provisions aim to prevent conflicts of interest and self-dealing by decision-makers in the organization.

Aside from the ban on employment of board or executive committee members, the CSO Proclamation does not explicitly prohibit the distribution of organizational income or assets to any person as compensation for services or goods provided to the organization. The CSO Proclamation mandates, however, that income from income-generating activities be used to cover administrative and program costs of the organization (CSO Proclamation Articles 64/4). The Proclamation also prohibits an organization established for the benefit of the general public or third parties from expending more than twenty percent of its total income on administrative expenses (CSO Proclamation 63/2). [6] Organizations established for the benefit of the public or third parties should be cognizant of the twenty percent cap when using income to compensate its administrative staff.

Special provisions relate to charitable endowments in this regard: according to the Proclamation, members of a charitable endowment’s board may not be remunerated unless the charitable

endowment's rules or a different law provide for remuneration (CSO Proclamation Article 28/1). Payments covering costs incurred by board members to attend board meetings are not considered as remuneration and are permitted (CSO Proclamation Article 28/2).

B. PROPRIETARY INTEREST

The CSO Proclamation does not explicitly restrict the ability of founders, members, or donors to retain ownership over assets contributed to an organization. [7]

There is an exception to this rule for charitable committees in certain circumstances, however. In general, if a charitable committee has insufficient funds to attain the object for which it was formed, or the object becomes impossible to achieve, the money or property will be returned to the persons who donated the money or property (unless the charitable committee's founding documents designate a different recipient) (CSO Proclamation Article 53). However, money or property collected by the charitable committee amounting to more than what is necessary for the attainment of the proposed purpose will not be returned to the donors, but rather donated to another charitable purpose (in accordance with the founding documents) or disposed of by the CSO Agency for a similar charitable purpose (in the absence of such a provision in the founding documents) (CSO Proclamation Article 54).

C. DISSOLUTION

A CSO may be voluntarily dissolved by its competent organ in accordance with its governing rules (CSO Proclamation Article 83/1).

A CSO may be involuntarily dissolved by: (1) the Board of Directors of the CSO Agency [8] or (2) the Federal High Court (CSO Proclamation Article 83/1). In the first case, the Board of Directors of the CSO Agency may order the dissolution of a CSO if the CSO fails to rectify a violation of the Proclamation or other laws after being issued two warnings and after being suspended by the Director General of the CSO Agency for failing to rectify the violations (CSO Proclamation Article 78/4). The Board of Directors of the CSO Agency may also order the dissolution of a CSO if the CSO fails to turn in its annual report as required under the Proclamation, and subsequently fails to explain its failure to turn in the annual report to the CSO Agency (CSO Proclamation Article 70). A CSO may appeal the Board's order for dissolution to the Federal High Court within 30 days following the dissolution decision (CSO Proclamation Article 78/5).

The Federal High Court may dissolve a CSO if: (1) the CSO is convicted of a serious criminal offense or is repeatedly found guilty of a minor criminal offence, or (2) the organization is insolvent (CSO Proclamation Article 83/2).

Upon both voluntary and involuntary dissolution, the CSO Agency will appoint a liquidator to handle the CSO's property (CSO Proclamation 84/1). The liquidator will use the CSO's money and property to pay the debts of the organization and costs associated with dissolution. The liquidator will transfer any remaining money or property to another CSO in accordance with the CSO's rules or a prior decision of the governing body of the organization (CSO Proclamation 84/3). If neither the CSO's rules nor the CSO's governing body have provided for a recipient organization, the CSO Agency will choose a recipient organization (CSO Proclamation 84/4). In the case where a consortium of CSOs is dissolved, the remaining properties after the settlement of debt and costs associated with dissolution may be transferred to the member organizations of the consortium (CSO Proclamation 84/6).

D. ACTIVITIES

1. GENERAL ACTIVITIES

CSOs enjoy legal personality once they have registered with the CSO Agency. As such, they can engage in all activities of legal persons, such as entering into contracts, suing and being sued, and owning, administering, and transferring movable and immovable property in their own name (CSO Proclamation Article 61).

In general, a CSO may engage in “any lawful activity to accomplish its objectives” (CSO Proclamation Article 62/1). CSOs seeking to engage in sectors that require an additional permit by law must obtain the necessary permit from the government body overseeing that sector (CSO Article 62/10). [9]

The Proclamation does limit the permissible objectives of an organization by mandating that a CSO established to benefit the public or third parties must ensure that its activities “consider the interests” of marginalized groups such as women, children, people with disabilities, and the elderly (CSO Proclamation Article 62/9). In addition, a CSO must “make the necessary efforts to ensure that its activities help to bring about sustainable development, contribute to the democratization process, promote the rights and interests of its members or enhance the profession they are engaged in” (CSO Proclamation Article 62/8).

Charitable committees are more constrained than other CSOs: according to the Proclamation, charitable committees must obtain approval from the CSO Agency before they may undertake activities that are not carried out for a charitable purpose (CSO Proclamation Article 49/1).

2. ECONOMIC ACTIVITIES

As a general rule, CSOs may solicit, receive, and utilize funds from any legal source—including foreign sources—to fulfill their objectives (CSO Proclamation Article 63/1/c). [10] This includes the right to engage in any lawful business or investment activities, in accordance with relevant trade and investment laws, to raise funds to fulfill their objectives (CSO Proclamation Article 63/1/b). Income generated from such activities must be used to cover administrative and program costs of the organization, and may not be distributed to members or workers of the organization (CSO Proclamation Article 64/4 and 64/5). Additionally, as noted above, a CSO must not expend more than twenty percent of its total income on administrative expenses (CSO Proclamation Article 63/2).

CSOs engaging in income-generating activities may do so by establishing a separate business organization (i.e. a company), acquiring shares in an existing company, collecting public donations, or operating their business as a sole proprietorship (CSO Proclamation Article 64/1). [11] CSOs engaged in income-generating activities must keep a separate bank account and track their business expenses separately in compliance with relevant commercial and tax laws (CSO Proclamation Article 64/2). Income-generating activities will be subject to the relevant tax, commercial registration and business licensing, and investment laws (CSO Proclamation Article 64/3).

Charitable committees are subject to limitations that do not apply to other CSOs, and may not solicit funds without the approval of the CSO Agency for each fundraising effort (CSO Proclamation Article 49/1).

3. *POLITICAL ACTIVITIES*

The Proclamation does not prohibit CSOs from engaging in political activities, including legislative lobbying. However, the Proclamation defines CSOs as “non-partisan” (CSO Proclamation Article 2/1). It remains to be seen what types of activities the government will view as “partisan” and “non-partisan,” and how this interpretation will impact organizations that engage in “partisan” activities.

By contrast, foreign organizations and local organizations established by foreign citizens residing in Ethiopia “may not engage in lobbying political parties, engage in voters [sic] education or election observations” (CSO Proclamation Article 62/5).

E. *DISCRIMINATION*

The Constitution of the Federal Democratic Republic of Ethiopia guarantees to all persons “equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status” (Constitution Article 25). There is no specific legislation dealing with the issue of discrimination by educational institutions.

F. *CONTROL OF ORGANIZATION*

The CSO Proclamation does not prohibit another entity from controlling a CSO.

V. *TAX LAWS*

A. *INCOME TAX*

All CSOs are exempt from income tax on grants and membership fees (Income Tax Proclamation Article 65/1).

CSOs’ income from economic activities is subject to the same taxes as income generated by business entities (CSO Proclamation Article 64).

B. *DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS*

Both individuals and business entities can deduct up to 10 percent of their taxable income that is donated to Ethiopian charities and societies (Income Tax Proclamation Article 24). Because the “charities and societies” terminology differs from the terminology for CSOs in the new CSO Proclamation, it is unclear whether and how Ethiopian tax authorities will apply this provision. It remains to be seen whether the 2016 Income Tax Proclamation will be amended to reflect this change in terminology, or whether new rules will be adopted regarding the taxation of activities related to CSOs.

C. *CUSTOMS DUTIES, VALUE-ADDED TAX, AND TURNOVER TAX*

Under Article 65/1/g of the Income Tax Proclamation, CSOs may obtain an exemption from the customs duty on imports if the following three conditions are met:

- (1) the organization has signed an agreement in writing with the government regarding the organization’s provision of financial, humanitarian, or administrative assistance;
- (2) the above agreement contains a provision exempting the organization from paying the customs duty on imports; and

(3) the Ministry of Finance approves the organization's exemption from customs duties in writing.

CSOs that enjoy customs duty exemptions may not transfer items imported under a duty-free scheme to other persons who do not enjoy similar privileges without the approval of the Customs Authority. The organization buying the items must pay the customs duty unless it also has duty-free privileges (Customs Proclamation Article 68/1).

The VAT rate is 15 percent (VAT Proclamation Article 7). Foreign grants are not subject to VAT or similar taxes. A business organization that makes transactions over 500,000 Ethiopian Birr (approximately 17,376 USD) within the scope of one year must register for the VAT and collect the VAT from its partners, which may include CSOs (Value Added Tax Proclamation Article 16/1). Certain supplies of goods and services are exempt from the VAT, including the rendering of educational and medical services, among others (VAT Proclamation Article 8(2)(a)-(p)).

The turnover tax is an indirect tax that applies to business organizations whose annual transactions fall below the 500,000 Birr threshold of the VAT Proclamation. The turnover tax rate is 2 percent on goods sold locally; 2 percent on services rendered by contractors, grain mills, tractors and combine-harvesters; and 10 percent on other services (Turnover Tax Proclamation Article 4). A CSO may have to pay the turnover tax if they secure goods or specific services from business whose annual transactions fall below the threshold for the VAT.

D. DOUBLE TAX TREATIES

The United States and the Federal Democratic Republic of Ethiopia have not signed any double tax treaties.

VI. KNOWLEDGABLE CONTACTS

Debebe Hailegebriel debebehg@gmail.com

FOOTNOTES

[1] As of September 2019, the government of the Amhara Region is considering the adoption of a new CSO law that largely mirrors the national Proclamation.

[2] Title III, Chapters 2 to 4 of the Ethiopian Civil Code governs associations, endowments, trusts, and comparable foreign bodies.

[3] See the Amhara National Regional State Charities and Societies Registration and Administration Proclamation No. 194/2012, and the Charities and Societies Registration and Administration Determination, Council of Regional Government Regulation No. 117/2013. Given the adoption of the CSO Proclamation and the Abiy administration's more enabling approach towards civil society in Ethiopia, the other regional states may also enact their own CSO laws.

[4] A local expert noted that there is insufficient data on the number of CSOs operating in single regions compared to the number of CSOs operating in multiple regions. However, he estimates that a majority of CSOs operate at the multi-regional level, thus rendering the 1960 Civil Code, which applies to CSOs operating in a single region, less relevant to this Note.

[5] For example, Article 86 of the CSO Proclamation establishes a "Civil Societies Fund" which "shall be used to encourage volunteerism and development in the sector and provide incentives to Organizations

working with vulnerable groups.” This seems to suggest that the government intends to provide some financial incentives for organizations engaged in certain types of public interest work. As noted above, since implementation of the Proclamation is still at an early stage, certain rules related to CSOs—such as whether a CSO can access special benefits or obtain a special public benefit status if it operates in the public interest—will likely be clarified in forthcoming directives and regulations.

[6] Under the CSO Proclamation, “administrative expenses” include the salaries and benefits of administrative employees; purchase of consumables and fixed assets and repair and maintenance expenses related to administrative matters; office rent; parking fees; audit fees; advertisement expenses; bank service fees; fees for electricity, fax, water and internet services; postal and printing expenses; taxes; purchase and repair of vehicles for administrative purposes, and procurement of oil and lubricants for the same; insurance costs; penalties; and attorney fees (CSO Proclamation Article 63/2).

[7] Article 61/4 of the CSO Proclamation governs the ownership, administration, transfer, and disposal of property. A local expert noted that the official English translation of Article 61/4 may not accurately reflect the meaning contained in the Amharic version, explaining that while the English translation does not appear to prohibit founders, members, or donors from retaining ownership over assets attributed to a CSO, the Amharic version could be read to include such a prohibition. It will be important to continue monitoring the Government’s treatment of CSO asset ownership to clarify this possible discrepancy.

[8] The CSO Agency is a newly-established body under the 2019 CSO Proclamation. The CSO Agency oversees the registration and monitoring of CSOs, among other powers, and is led by its Board of Directors. The Board of Directors of the CSO Agency sets policy directions for the CSO Agency, hears appeals on registration decisions by the CSO Agency, sets up independent complaint review committees as necessary, and issues directives under the CSO Proclamation, among other powers.

[9] Such sectors include health, education, and childcare, among others. A CSO is presumed to be permitted to operate in the sector of its choice unless another law requires the CSO to obtain a permit to practice in its desired sector.

[10] The CSO Proclamation eliminated the restrictions previously imposed on CSOs’ receipt of foreign funding by the 2009 Proclamation.

[11] This is not an exhaustive list. CSOs intending to engage in income-generating activities may do so through other mechanisms but must comply with relevant trade licensing and registration laws.