THE CLAMP-DOWN ON RESOURCING: COMPARING CIVIL SOCIETY AND BUSINESS

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Ethiopia, in the late 2000s: on one side is civil society, emerging after years of subjugation under a succes-sionof repressive governments and slowly finding its feet. On the other is the country's business community, roaring back to life after years of economic stagnation.

While rates of growth were different, there is no doubt that both sectors were on an upward trajectory, bolstered by the space engendered by the fall of the repressive 'Red Terror' regime of Mengistu Haile Mari-am. Exiles returned, many with new skills and focus obtained from many years living abroad, determined to ensure that Ethiopia never returned to the dark days of political and economic depression. At the same time, Ethiopia enjoyed the massive goodwill of the interna-tional community, both political and economic, with Prime Minister Mele Zenawi touted as one of the new generation of visionary African leaders.

Then everything changed.

In 2009, the Ethiopian government enacted a law prohibiting domestic civil society organisations (CSOs) working in certain rights-based areas, including gen-der and children's rights, from receiving more than 10% of their funding from foreign sources. What hap-pened next was no surprise. The country's civil soci-ety infrastructure collapsed, with one source claiming that the number of registered organisations has fallen by some 60% since then. Others say that there are no more than three independent human rights organisa-tions left working in Ethiopia.

Meanwhile, the government was implementing a completely different approach towards the business sector. They wanted more foreign money, not less.

Foreign cash flooded into Ethiopia, and encouraging more of it became a matter of national policy, perhaps best epitomised by the 2010 Growth and Transformation Plan, a five-year project to encourage billions of dollars of new foreign investment.

The results of this influx of foreign cash have been no surprise. The business sector has boomed. Ethiopia is now creating millionaires faster than any country on earth, doubling its share from 1,300 to 2,700 in just six years. Gross domestic product (GDP) growth averaged 39% a year over the same time. The roster of recent foreign investments in the Ethiopian economy is too long to list: for example, a Chinese firm just announced plans to invest US$15m in the textile industry, while in 2012 British beverage company Diageo purchased a local brewery for US$225m and invested US$119m to expand it. Turkish investors alone have poured US$1.2bn into the country over the past 10 years. Bob Geldof, of Band Aid fame, is even investing in the local wine industry.

And of course the government itself has never shied away from foreign money: it receives some 40% of its national budget via foreign aid, which amounted to US$3.2bn in 2012 alone.

These are the best of times and the worst of times in Ethiopia. And it's clear who is getting the short end of the stick. Ethiopia's government and business community are firmly plugged into the modern network of global capital, while civil society has been disconnected - and left to whither and die.

A GROWING TREND WORLDWIDE

At first glance, the business and civil society sectors may seem strange bedfellows for comparison. Conventional wisdom tells us that these two entities are distinct, warranting separate rules and treatment. The basis for this treatment seems to boil down to one dividing point: one exists to make a profit; the other is non-profit.

But beyond their dissimilar profit motives, just how different are businesses and civil society? And how differently should governments treat them?

The funding aspect of this question is among the topics we have been examining for the past year in a series of regional dialogues on civic space, organised jointly by the Community of Democracies and the office of the UN Special Rapporteur on the rights of freedom of peaceful assembly and of association. The broader topic of sectoral equity - from registration to operational rules - will be the subject of the Special Rapporteur's next report to the UN General Assembly in October 2015. The report will survey law, practice and perception in a number of jurisdictions around the world, with a focus on identifying how civil society and businesses are treated differently as legal entities, for better or for worse.

Obviously, resources are a central issue when it comes to differential treatment. They are the lifeblood of any organisation, as the Special Rapporteur pointed out

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in his 2013 report on civil society's ability to access resources. You can't do much without resources: staff, offices, equipment and the implementation of plans and programmes all require resources.

Cutting financial resources off is an easy way for a government to silence a CSO that's a bit too critical, or even a business that refuses to toe the line, even if that line is the sharing of resources with the powerful political elite. And it's also relatively easy to cloak restrictions on funding in the language of national security or crime prevention, even when these aren't the true reasons behind the restrictions.

Ethiopia is not unique in treating civil society and businesses differently when it comes to their ability to look abroad for funds.

Russia, for example, requires CSOs receiving foreign funds and engaging in vaguely-defined 'political activity' to register as 'foreign agents', which carries the connotation that they are spies. We are not aware of a similar restriction requiring businesses with foreign investment to do the same. In fact, as recently as 2014, Russia was ranked the third most successful in the world in attracting capital from abroad.

India's Foreign Contribution Regulation Act requires every CSO receiving funds from 'foreign sources' to receive prior permission or to register under the Act. Granted, India does place some limits on foreign direct investment for businesses, but it is currently moving to liberalise investment in several sectors. The government recently welcomed investment pledges in excess of US$50bn from companies in China and Japan, for example. That figure makes quite small the US$266,000 in foreign funding that the government tried to block over six months, with the freezing of the foreign aid for Greenpeace India.

In Egypt, meanwhile, the government is currently conducting something of a witch hunt against CSOs that have accepted foreign funding. But they are headed in the opposite direction when it comes to foreign capital for businesses: economic reforms have led to a wave of recent investment, including US$12bn from BP and US$500m from Coca Cola.

The situation in Hungary is worth noting as well. It has no formal restrictions against CSOs receiving foreign funding, but the government launched last year what some described as an all out attack on a group of CSOs that were receiving funding from the government of Norway. The police clampdown was subsequently judged illegal by the court, but some problems remain. Businesses receiving investment from abroad do not seem to have been singled out for such treatment. On the contrary, the Hungarian government has heavily promoted itself as a leading destination for foreign direct investment, with PR videos and the creation of a favourable legal environment.

Dozens more examples of the crackdown on foreign funding to civil society can be found in an excellent and comprehensive study published in 2015 in the International Journal of *Not-for-Profit Law by Doug Rutzen*, from the International *Center for Not-for-Profit Law.*

Moving beyond funding, the differences can be even starker. In Rwanda, for example, a business can be registered in a matter of hours, while CSO registration can

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take months. In Oman, it is forbidden to start a new association with the same broadly-defined 'purpose' as a pre-existing association; no such regulation exists for businesses. And around the world, businesses - particularly large ones - frequently have superior access to the halls of power, when compared to CSOs. Of course there are nuances to this differential treatment, but these wrinkles help explain why the distinct treatment persists, and perhaps provide clues on how to address the problem.

Rare is the country, for example, that simply opens the floodgates to foreign investment in its business sector. It is often controlled and deliberately directed at certain industries, especially in the case of foreign direct investment (e.g., a controlling ownership of a business in one country by an entity based in another).

Ethiopia, for example, is actually considered somewhat difficult for investors, largely because of the level of state control. Certain sectors remain off-limits to foreigners, including banking, insurance and financial services. Russia and the United States impose formal restrictions on investment in certain sensitive sectors. And registration of foreign capital is required in a number of jurisdictions.

But overall the trend in business investment seems to be toward liberalisation, with governments typically enabling more foreign investment in more sectors with fewer restrictions. The trend in civil society is the opposite: less foreign funding with more restrictions.

RESTRICTIONS ON FUNDING AS A MEANS OF CONTROL

Why is this?

Our experience and research suggest that restrictions boil down to the perceived threats and benefits from each sector. The resulting level of control is a direct corollary.

In short, it's political. Restrictions against the non-profit sector might be cloaked in terms of national security and good governance, but few pass muster under close scrutiny. They tend instead to be signs of a ruling government's weakness - an attempt to assert control, reduce public criticism, consolidate power or hoard the benefits of economic development.

Businesses pose comparatively few threats to power, while the potential benefits they bring are vast. By definition, businesses exist to make money; they also have money to spend, on anything from political campaigns to lobbying to kickbacks. Their activity stimulates the economy, which creates jobs and makes governments look good. Their values are centred on profit-making, making them more malleable and more likely not to criticise unless their direct interests are threatened, regardless of the political structure in place. There are always exceptions, but relationships with businesses are inherently more comfortable for governments, particularly those looking to consolidate power.

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Civil society, of course, does not exist to make money and often doesn't have very much of it. By challenging and speaking truth to power, civil society's relationship with government can also be more antagonistic - although not always. And this is where the comparison gets more interesting.

Civil society is diverse, ranging from service delivery groups that work hand-in-hand with governments to accountability watchdogs that aim to keep power in check. Yet throughout history, the progressive changes that we enjoy are a direct result of civil society. Remember the anti-slavery movement? The anti-apartheid movement? The civil rights movement? Trade union movements? The women's movement?

And it's telling how treatment diverges for each faction, as a sort of divide-and-conquer technique. Ethiopia's law, for example, limits foreign funding only to groups working on certain human rights areas. Russia only targets the aforementioned 'political activity', which is poorly defined.

Again, financial controls correlate with perceived threat. A CSO that unquestioningly works to supplement a country's healthcare system seems to provide a direct benefit to the ruling government: it is thus less likely to face restrictions on funding.

A CSO working to expose corruption, impunity or election fraud, despite the immense public good it does, is not seen as slavishly supporting the ruling elite. As we've found thus far, it is more likely to see its funding sources attacked.

The fact that some governments are cracking down on civil society's ability to access resources isn't exactly news. But putting this trend in the larger, multi-sector comparative context illuminates an issue that hasn't received as much attention: in each scenario, the government remains firmly in the driver's seat. Governments allow foreign investment and service-delivery CSOs because they think this benefits them; they don't allow foreign funding of civil society because they think this hurts them.

THE WAY FORWARD: SECTORAL EQUITY

We would like to see a more level playing field across the board.

There may indeed be legitimate reasons for restricting money from abroad on occasion, whether it is destined for businesses or civil society. But these restrictions should never be imposed simply to further a ruling government's political ambitions or grip on power. They should be fashioned for the benefit of the broader population. Political benefit to a ruling party is not a legitimate basis for restricting funding, whether to civil society or business.

That is not to say that businesses and civil society should be treated identically. They do have their differences. We instead advocate for what the Special Rapporteur has referred to in a number of his reports as 'sectoral equity' - in other words, a fair, transparent and impartial approach.

Such an approach should recognise, of course, the many similarities that businesses and civil society

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share. Both are non-state actors, potential employers, providers of goods and services, magnets for investment, and possible platforms for mobilising people and influencing policy. But it should also recognise the differences. Both civil society and business are crucial to economic and political development, but in different ways. Government policy and practice should give them the space to do this on their own terms, not as an appendage operating at the whim of a ruling party.

It won't be an easy road to reform. For starters, many governments have no incentive to level the playing field, as illustrated by the fact that the trend for restrictions on civil society funding is growing, rather than shrinking. And the sector that wields the most potential power in this battle - business - has historically lacked close links with civil society. There are also divisions within civil society itself, fragmented and compartmentalised as it has become today. It remains rare, for example, to see a service delivery CSO stand up to a government that bullies a civil society cousin in the advocacy field. There's a prevailing attitude of 'everyone for themselves'. Divide-and-conquer is winning.

That's not how it has to be. Businesses and civil society - in all of its incarnations - actually do have a strong convergence of interests when it comes to levelling the playing field.

The rule of law is preferable to the rule of power. Predictability trumps disorder. Fairness is better than corruption. These statements ring as true for business as they do for civil society. Stable, balanced environments are better for everyone, whether they be a multinational corporation, a grassroots activist group, or a major international CSO working on health issues.

It is time that we acknowledge our similarities and start working together to achieve this, for the benefit of each sector, and for society as a whole.

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