

Negotiating International Civil Society Support: the Case of Ethiopia's 2009 Charities and Societies Proclamation

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Negotiating International Civil Society Support

The Case of Ethiopia's 2009 Charities and Societies Proclamation

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Negotiating International Civil Society Support

Jalale Getachew Birru and Jonas Wolff¹

ABSTRACT

Since 2005, international civil society support has faced increasing resistance around the world. Ethiopia is widely recognized as a key example of this so-called Closing Space phenomenon. With the Charities and Societies Proclamation (CSP), adopted in 2009, Ethiopia has established strict regulations on civil society organizations that, in particular, restrict the ability of local associations to make use of foreign funding as well as the range of activities allowed for foreign (funded) organizations. In PRIF Working Paper “Negotiating International Civil Society Support: The Case of Ethiopia’s 2009 Charities and Societies Proclamation”, Jalale Getachew Birru and Jonas Wolff trace the process of international negotiations that has accompanied the drafting of the Ethiopian NGO law and identify the consequences of these negotiations for international civil society support in the country. Focusing on the interaction between foreign “donors” and the Ethiopian government, the authors analyze (a) what precisely these negotiations have been about, (b) to what extent these negotiations have actually influenced the content of the CSP, and (c) how the CSP as finally adopted has actually affected international civil society support in Ethiopia.

1 INTRODUCTION

Increasing restrictions on international civil society support constitute a key element in the much-discussed backlash against democracy promotion. In particular, the last 15 years have seen the proliferation of so-called NGO laws that, amongst other things, impose constraints on the access of local civil society organizations (CSOs) to foreign support and thereby restrict the space of both local CSOs and international democracy promoters (Dupuy et al. 2016). In this context, “[e]fforts to pressure governments not to adopt restrictive NGO laws have surged as an area of diplomatic engagement” (Carothers and Brechenmacher 2014: 58). As a consequence, intergovernmental negotiations that concern the drafting, adoption and implementation of such laws constitute an important strategy through which “donor” governments try to deal with the increasing resistance against international civil society support. While an increasing number of studies analyze the overall phenomenon of a “closing space” around civil society support,² we however lack empirical research on the negotiations in which “donors” and “recipients” argue over the regulations that are to restrict this space.

This paper contributes to closing this research gap by zooming on one prominent case, the Ethiopian Charities and Societies Proclamation (CSP). Adopted in early 2009, the CSP is usually considered a prime example of a particularly harsh NGO law and Ethiopia, hence, among the most frequently mentioned cases of a closing space (see Carothers and Brechenmacher 2014: 8; Christensen and Weinstein 2013: 80; Dupuy et al. 2016: 300–301; Rutzen 2015: 14; Wolff and Poppe 2015: 15–19). At the same time, Ethiopia, at the time of the negotiations, has been “the largest African recipient of Overseas Development Assistance (ODA)”, with much of this assistance being “directed towards NGOs” (Dupuy et al. 2015: 433). The CSP imposed strict regulations on this kind of

1 This paper was written during a research stay of Jalale at the Peace Research Institute Frankfurt (PRIF) in the context of the German research network “External Democracy Promotion” (EDP), which is generously funded by the Leibniz Association (see www.external-democracy-promotion.eu). A previous version was presented in May 2017 at a workshop on “Negotiating the Promotion of Democracy” organized by the EDP network at PRIF. The authors thank the participants and in particular our discussants Prakash Bhattarai and Julia Leininger for helpful comments. Research assistance by Emelie Lekebjerg is gratefully acknowledged.

2 See, for instance, Carothers and Brechenmacher (2014); Christensen and Weinstein (2013); Dupuy et al. (2016); Rutzen (2015); and Poppe and Wolff (2017).

foreign support; most notably, it determined that foreign CSOs as well as Ethiopian organizations that use more than ten percent of their funding from foreign sources are prohibited from working on a whole range of issues, including “the advancement of human and democratic rights” (CSP 2009; see Hailegebriel 2010: 18–19; Hayman et al. 2013: 14–15; Yeshanew 2012: 372–373). In the nine months before the CSP was adopted, representatives of North-Western “donors” – and, in particular, the ambassadors from the US, the UK and France – met on several occasions with Ethiopian counterparts, including Ethiopian Prime Minister Meles Zenawi, to discuss changing draft versions of the law. US embassy reports on these meetings, which have been published by WikiLeaks, offer exceptional insights into this process of diplomatic exchanges.³

In what follows, we trace the intergovernmental negotiations that have accompanied the drafting of the CSP and identify the consequences of these negotiations for international civil society support in the country. After a brief overview of the context in Ethiopia, which is presented in Section 2, Section 3 reconstructs the process of negotiations based on the available US embassy reports. In doing so, we (a) systematically identify the issues that were negotiated and (b) assess the extent to which these negotiations have actually influenced the content of the CSP. Our answer to this second question is, however, tentative only because our analysis of the international negotiations does not account for the intra-Ethiopian process of drafting the CSP. Section 4, then, analyzes (c) how international civil society support has changed following the adoption of the CSP.

In a nutshell, we argue that the negotiations between the Ethiopian government and North-Western donor governments covered a broad range of issues ranging from specific provisions in the planned legislation (policy formulation) up to different notions of democracy that underlie the diverging viewpoints on international civil society support (normative premises). According to our analysis, the impact of these negotiations on the content of the CSP has been quite limited, but this does not mean that they have been unimportant. In fact, we argue, the purpose of the negotiations was not so much to reach an agreement on the NGO law in question (which both sides, from the outset, considered to be an unattainable aim anyway). The shared – if implicit – aim was rather an informal, *de facto* agreement that would allow for an uninterrupted continuation of bilateral relations in spite of the obvious and persisting differences over the substantial issue at hand. This underlying logic of the negotiations is clearly reflected in their consequences for international civil society support. While the CSP has had significant effects on Ethiopian civil society organizations, its effects on international civil society support in the country have been rather limited. Donors were mostly able to either unilaterally or in cooperation with the Ethiopian government adjust existing civil society programs, bringing them in line with, or exempting them from, the new regulatory framework.

2 ETHIOPIA, CIVIL SOCIETY AND FOREIGN ASSISTANCE: AN OVERVIEW

While Ethiopia has a long tradition of civic organizing, in particular at the community level, it was the end of the military regime of the Derg in 1991 and the political liberalization under the Ethiopian People’s Revolutionary Democratic Front (EPRDF), which has governed the country since then, that facilitated the emergence of a broad range of formally established NGOs (Clark 2000: 1; ICNL 2016; Yeshanew 2012: 371).⁴ Also stimulated by increasing North-Western aid, “the number of active, Ethiopia-based NGOs grew exponentially, from 70 in 1994 to 368 in 2000, and to 2275 in

3 These diplomatic cables will be cited in brackets, giving the official code (XXADDISABABAXXXX) by which they can be identified and found at <https://wikileaks.org>. On the methodological, ethical, and legal challenges of using leaked information in general, and WikiLeaks in particular, see Michael (2015).

4 We talk about NGOs when referring to formally established nongovernmental, not-for-profit organizations that claim to represent some general public interest. The term CSOs, in contrast, broadly refers to the range of organizations, associations and groups that are neither governmental nor for-profit. This range includes NGOs but also traditional community-based organizations, informal neighborhood associations or organized interest groups such as trade unions or business associations.

2009” (Dupuy et al. 2015: 425; see also Yeshanew 2012). In the 1990s, most organizations did not get involved in advocacy, human rights and/or electoral processes, but rather focused on service delivery (Mikkelsen et al. 2008: 36; see also Clark 2000: 10–11). This, however, changed with the national elections of 2005, which saw national and international NGOs play a much more active role (Mikkelsen et al. 2008: 21). When opposition parties denounced fraud and large-scale post-electoral protests challenged the official results, the EPRDF government violently cracked down on the protests and specifically accused civil society organizations and activists of supporting both the opposition and the violence (see Dupuy et al. 2015: 425; Hailegebriel 2010: 19–23). In this context, the Ethiopian Ministry of Foreign Affairs also expelled three US-based organizations – the International Foundation for Electoral Systems (IFES), the International Republican Institute (IRI), and the National Democratic Institute (NDI) – from the country, “accusing them of operating in the country illegally and failing to report their activities to the government” (Carothers and Brechenmacher 2014: 14).

The contested 2005 elections are generally regarded as the key experience that led the Ethiopian government to take an increasingly harsh attitude vis-à-vis independent CSOs and, in particular, to adopt a series of laws that are widely seen as significantly restricting the space for civil society activism (see Dupuy et al. 2014; Hailegebriel 2010; Human Rights Watch 2009; ICNL 2016). These legal initiatives included the Electoral Law of Ethiopia Amendment Proclamation (No. 532/2007), the Mass Media and Access to Information Proclamation (No. 590/2008), the Anti-Terrorism Proclamation (No. 652/2009) and, of course, the Charities and Societies Proclamation (No. 621/2009).

Before the CSP, there was no law that specifically regulated the operation of CSOs in Ethiopia (Yeshanew 2012: 370). In line with the 1960 Civil Code, the then Ministry of Internal Affairs was designated to oversee the CSOs and, in the 1960s, issued The Association Registration Regulation (No. 321/1966). The 1995 Guidelines for NGO Operations updated these procedures, outlined major classifications for the sector, and defined areas for programmatic activities (Clark 2000: 12–13). During the 1990s, Ethiopian CSOs themselves lobbied the government “to provide an up to date and enabling law for their operation” (Cerritelli et al. 2008: 40) but, since 2003 and in particular since 2005, the government had considered “legislation incorporating foreign funding restrictions as well as other restrictive provisions” (Hailegebriel 2010: 19).

On January 6, 2009, the Ethiopian parliament adopted the CSP, with implementation starting one year later. The law applies to two types of charitable organizations in Ethiopia (Charities and Societies), which are further grouped into three categories: (1) Ethiopian Charities or Societies, (2) Ethiopian Resident Charities or Societies, and (3) Foreign Charities. Only those organizations that have Ethiopian members only, generate income from Ethiopia, are “wholly controlled by Ethiopians” and “use not more than ten percent of their funds which is received from foreign sources” are considered as Ethiopian without qualification. Once local CSOs use more than 10 percent of their funds from foreign sources, they become “Ethiopian Resident” organizations. “Foreign Charities”, finally, are those organizations that include non-Ethiopian members or are controlled by foreign nationals (CSP 2009: Article 2). This distinction is crucial because “Ethiopian Resident” and “Foreign” organizations are prohibited from participating in a range of activities, including in the promotion of “human and democratic rights”, “equality of nations, nationalities and peoples and that of gender and religion”, of “the rights of the disabled and children’s rights”, “conflict resolution or reconciliation”, as well as of “the efficiency of the justice and law enforcement services” (CSP 2009: Article 14 [2], [5]).

Explicitly exempted from this proclamation are other kinds of CSOs, including “mass-based societies” (“professional associations, women’s associations, youth associations and other similar Ethio-

pian societies”),⁵ “religious organizations”, traditional, financial, cultural or religious associations (such as “Edir” and “Ekub”), as well as “Societies governed by other laws”. Also, “international or foreign organizations operating in Ethiopia by virtue of an agreement with the Government” are excluded (see Articles 2 [5], 3 [2]). As a result, it is basically charitable NGOs that are affected by the CSP. All such organizations – fully domestic, resident and foreign – are required to register with the newly established Charities and Societies Agency (CSA),⁶ and the CSA has “virtually unlimited authority to exercise control over the operations of a charity or society” (ICNL 2016), including to decline their request for registration, to revoke licenses and to oversee their activities (see CSP 2009: Articles 4–6, 84–94).

3 NEGOTIATING THE CHARITIES AND SOCIETIES PROCLAMATION: ISSUES AND RESULTS

After a 2007 version of the CSP had been leaked on websites in early 2008, the Ethiopian government forwarded a first official draft of the CSP to representatives of local CSOs on May 2, 2008, inviting them to a consultative meeting on May 6. This draft, which was much more “draconian in nature” than the leaked version from 2007 (08ADDISABABA1223), contained all the core regulations that would characterize the later law, including the severe restrictions on foreign funding. In the course of the year, three more draft versions (in June, September and November) were circulated until the CSP was finally submitted to parliament in December 2008 and approved in early January 2009.

Throughout this drafting process, Ethiopian CSOs, which had responded to the government’s call by establishing a joint task-force, participated in various consultative meetings with the government, prepared joint commentaries on the drafts, and organized forums to discuss the issue with government officials, experts and CSO representatives (Hailegebriel 2010: 24–25; see also Cerritelli et al. 2008: 40–42). In the following, however, we will focus on the discussions between the Ethiopian authorities and international donors. According to Debebe Hailegebriel, a leading consultant of the taskforce of Ethiopian CSOs that accompanied the drafting process, the “international community played a significant role in exerting influence on the Ethiopian Government” (2010: 25). In particular, four rounds of in-depth meetings of the ambassadors from the US (Donald Yamamoto), the UK (Norman Ling) and France (Stephane Gompertz) with Ethiopian Prime Minister Meles Zenawi took place (in May, June, July and October 2008) as well as additional meetings by the US ambassador as well as by then US Assistant Secretary of State David Kramer with Meles and other high-level officials from the Ethiopian government and the ruling EPRDF.⁷

3.1 Overview of the process and the results of the negotiations

A few days after the first 2008 draft of the CSP was released, US Ambassador Yamamoto met with Ethiopian State Minister of Foreign Affairs Tekeda Alemu on May 7, “raised this issue in strong terms” and emphasized that the new law would affect all US foreign assistance programs in the country (08ADDISABABA1223). The US Embassy in Addis Ababa also reportedly began to call on officials in the Ethiopian government “to raise concerns about the draft law and seek to stop the law from progressing further” and started to “cooperate with other major donors”. This culminated in the first meeting of the three North-Western ambassadors with Prime Minister Meles “to

5 In fact, the CSP explicitly emphasizes that “Ethiopian mass-based organizations may actively participate in the process of strengthening democratization and elections” (Article 57 [7]).

6 Before registration, organizations “may not solicit money and property exceeding fifty thousand birr” (CSP 2009: Article 65 [3]). At current exchange rates, 50,000 birr are approximately 2,500 US dollars.

7 In drawing mainly on the US embassy cables released by Wikileaks, the following analysis necessarily focuses on the US, although the reports also include substantive references to the above-mentioned series of joint meetings between Prime Minister Meles and the three North-Western ambassadors. In this sense, then, even if many more donors participated in the process of negotiations, our observations are arguably representative for the overall process given that the donor community, in this case, spoke with an unusually “unified voice” (Hailegebriel 2010: 25).

discuss this subject” (08ADDISABABA1223). In this meeting, on May 9, the ambassadors “raised deep concern that the new proposed NGO law [...] would so severely restrict NGO operations, especially in support of democratic and good governance programs heading into 2010 elections, that it would severely undermine Ethiopia’s relations with its most important donor partners.” Meles, in reaction, agreed to enter into some kind of negotiation by promising “to delay submission of the proposed law to the council of ministers until the ambassadors could submit in writing specific concerns and questions on the NGO law and follow-up discussion with the Prime Minister”. The US Embassy, on its part, aimed at such negotiations in order to “seek clarification of the new NGO law” and “urge changes” (08ADDISABABA1259). The agreed-upon aim of the negotiations was, therefore, to clarify doubts concerning the planned legislation, including by revising the draft law. At the same time, however, the US Embassy did not expect that more than minor revisions were likely to happen and, therefore, also used the process of negotiations to buy time and, through coordinated donor outreach activities to raise concerns with Ethiopian government and party officials, “seek to stop the law from progressing further” (08ADDISABABA1223). The donor strategy was, in this sense, twofold: On the one hand, the donors aimed at applying “international pressure to either ‘kill’ or delay the bill” (08ADDISABABA2103). On the other hand, the ambassadors did engage in negotiations in the sense of advocating “for a discrete set of technical alterations that would make the bill less prohibitive to civil society operations in Ethiopia” (08ADDISABABA2846). The other way round, the donors and local CSO representatives saw Prime Minister Meles as basically using the negotiations – as well as the consultation of local CSOs – as a means to legitimize, through cosmetic changes that are presented as “compromises in response to stakeholder pressure”, a restrictive law that would be basically unchanged in its core regulations (08ADDISABABA2103).

Before the second meeting in June, the ambassadors sent a joint letter to the Ethiopian government “outlining concerns” over the draft CSP to which Prime Minister Meles responded during the conversation. Meles announced that the government would redraft the bill in order to address “the confusion and misunderstandings over many of the provisions” but, then, forward it to Parliament “before the July 7 recess” (08ADDISABABA1593). In fact, a revised version (second draft) was released in June which reportedly included a series of amendments but, instead of being sent to parliament, was again subjected to discussions with both local CSOs and international donors. In the third meeting in July, which was again preceded by a joint letter to Meles (08ADDISABABA2105), the ambassadors “passed over an analysis of the law prepared by the donors group”. The Ethiopian Prime Minister “said he would review the text and make changes to the proposed law, if necessary” (08ADDISABABA2105). The resulting third draft version of the CSP, however, was disappointing from the donors’ perspective: “a minimally revised version” (08ADDISABABA2482). This was reflected in the fourth meeting, in which Prime Minister Meles reiterated the willingness to continue with the discussion, albeit not with a view to further modify the draft law: Meles, rather, “committed to continue discussing this law with foreign interlocutors because it was important to get Ethiopia’s position better understood” (08ADDISABABA2846). The North-Western ambassadors, on their part, continued to express “their fundamental opposition to the bill”, but, at the same time, “advocated for a discrete set of technical alterations that would make the bill less prohibitive to civil society operations in Ethiopia” (08ADDISABABA2846). Yet, the fourth draft released in November 2008 did, again, “not incorporate any of the changes requested or address any of the concerns raised by successive waves of donor ambassadors and principals from capitals” (08ADDISABABA3100). Finally, when the fourth version of the draft bill was submitted to Parliament in early December, the US ambassador presented to key members of parliament “a technical analysis of the bill highlighting potential areas which may spur unintended consequences for foreign assistance and which offered minor changes that would make the bill less objectionable without violating the main tenets driving the bill” (08ADDISABABA3381).

Comparing the different draft versions of the CSP with the law eventually adopted by parliament, the following revisions stand out and plausibly reflect adjustments to the concerns voiced by international donors (and local CSOs):

- The preamble was modified, deleting explicitly restrictive references, including to the necessity of “the registration, licensing and regulation of charities and societies [...] for the prevention of the illegal acts that are perpetrated in the name of serving it, and for the fulfillment of the government’s duty to protect the public against illegal activities contrary to peace, order and morality” (CSP 2008).
- By introducing an intermediary category (“Ethiopian Residents” organizations), the label “foreign” is avoided for Ethiopian NGOs that receive more than ten percent of their funding from foreign sources.
- The ten-percent threshold refers to the share of the funds actually used, not – as initially phrased – to the percentage of their total asset.
- The purposes that are reserved for “Ethiopian” NGOs, strictly speaking, have been modified. In particular, development-related purposes (promotion of “community development” and of “the sustainable development of the nations, nationalities, and peoples of Ethiopia”) were deleted from the list of restricted areas. In turn, however, the promotion of gender equality and of the rights of disabled and children was added.
- The objectives, powers and functions of the CSA have been phrased in less restrictive (controlling) and more supportive (enabling) terms and made somewhat less intrusive.
- The need to renew the license of NGOs was changed from annually to every three years.
- Some harsh penalties, including the threat of imprisonment, were removed from the law.
- The right to appeal to the judiciary for “Ethiopian” NGOs was broadened beyond “questions of law” to include any “decision” (CSP 2008, 2009).

According to Hailegebriel, the overall impact of the consultations and discussions of the draft CSP has been limited, with the revisions being mostly “technical and cosmetic [rather] than substantive” (2010: 24; see also 09ADDISABABA31). In its official response to the adoption of the CSP, the EU, however, welcomed “the thorough exchanges of views” with the Ethiopian government and appreciated “that some of its concerns expressed on the draft have been addressed”, even if it duly noted that “core elements” of the law “remain unchanged” and “could potentially restrict the operations of civil society organisations, as well as international partners assistance” (EU 2009). The official response from Washington was less balanced and only expressed concerns, but in toned-down language: The US government showed itself “concerned” that the CSP “*appears to restrict* civil society activities and international partners’ ability to support Ethiopia’s own development efforts” (Wood 2009; our emphasis).

What is largely absent from the negotiations is explicit threats. Very clearly, there was little room for the US, or international donors more broadly, to threaten with significant negative consequences for the Ethiopian government as a bargaining tool. First, given that the focus of US foreign assistance was in an area (humanitarian aid) that not affected by the CSP, only a small share of US aid was likely to be affected whatever the precise regulations of the CSP. Second, given its key strategic interests in Ethiopia (Carothers and Brechenmacher 2014: 38; Dupuy et al. 215: 444), the US never considered broader sanctions. Third, the Ethiopian authorities knew this: As the US embassy reports to Washington, the Ethiopian government “is confident that donors will not suspend or cut the over US\$2 billion in foreign aid Ethiopia receives each year, regardless of what actions the GoE [Government of Ethiopia] takes” (08ADDISABABA1672). As a result, indirect threats that the new NGO law could have “unintended consequences” for “development and other programs” (08ADDISABABA1223) were, predictably, in vain. At the same time, this interest in not threatening the existing cooperation was mutual, as can be seen, for instance, in Ethiopian “assurances of

exceptions [to the new restrictions] for U.S. assistance programs” (08ADDISABABA1850). Still, Prime Minister Meles made it clear that threatening a reduction in foreign support would not lead to reconsideration on the part of the Ethiopian government (see 08ADDISABABA2846).

In terms of the issues that were on the negotiation table, the discussions touched upon four different levels of depth:⁸ With a view to the (draft) NGO law, negotiations concerned (1) the overall content and specific provisions of the CSP (policy formulation) as well as (2) the ways in which this law would affect (or not) the implementation of individual programs and projects (implementation); at a more general level, from the very beginning, the conversations also referred (3) to the political situation in Ethiopia, including what is needed in terms of improving its democracy (problem definition) as well as (4) to basic concepts and norms that underpin the regulation and support of civil society (normative premises). In fact, when reading the US embassy reports on the conversations it is remarkable how immediately and consistently the parties ended up talking about very basic notions of democracy (promotion) and civil society (support) and how these might and should be understood in the Ethiopian context.

3.2 Policy formulation

In terms of policy issues that were dealt with during the negotiations, a couple of specific topics stand out. US government officials and the three ambassadors regularly argued against the distinction between “Ethiopian” and “foreign” CSOs and the restrictions that were to come with being categorized as the latter, but quickly realized that the basic aim to restrict the areas of legitimate activity for those organizations that are either foreign or receive significant foreign funding was non-negotiable for the Ethiopian government (see 08ADDISABABA2846). The symbolic concession to label foreign-funded Ethiopian CSOs “Ethiopian Residents” instead of “Foreign” was apparently not seen as significant.⁹ In turn, efforts rather focused on the restricted purposes. In the July meeting, for instance, Prime Minister Meles reportedly responded to the three ambassadors’ “concerns over restrictions in helping women, children and handicap” by arguing that “these are advocacy issues and it could not be accepted because these are distinctly Ethiopian issues for Ethiopians to address” (08ADDISABABA2105). Later, when US Assistant Secretary Kramer argued “that certain sectors, such as conflict resolution and children’s rights should not be considered inherently political, Meles responded that, in his view, conflict resolution typically deals with issues of land, water, religion, which are inherently political” (08ADDISABABA2945) Judging from the revisions actually made to the CSP, it was only case of development-related purposes that the Ethiopian government accepted them as not all too political in nature (see above).

Other policy issues raised by the donors included the powers of the planned Charities and Societies Agency, the reporting requirements, the question of sanctions/penalties, as well as the right to judicial appeal. Meles, in response, “said he would review and consult his advisors on the Ambassadors’ concerns over the proposed agency that would oversee CSOs/NGOs, as well as the criminalization of activities and administrative errors. He would also review again the lack of an appeal process for those CSOs/NGOs objecting to administrative decisions of the agency” (08ADDISABABA2105; see also 08ADDISABABA2846). Later, he emphasized that the Ethiopian government had indeed addressed some of these concerns by “permitting court appeals [for “Ethiopian” CSOs] on matters of both law and fact” and by eliminated “annual reporting requirements” (08ADDISABABA2945). In the end, as mentioned above, the power of the CSA was also gradually relaxed and penalties softened. In a conversation with US Assistant Secretary Kramer, Meles, how-

⁸ The following typology (of levels of depth) directly draws on an analytical framework developed by Annika E. Poppe, Julia Leininger and Jonas Wolff in the context of the German research network “External Democracy Promotion” (EDP).

⁹ At least, this revision was not reported as such in any of the embassy cables analyzed. In fact, the embassy continued to talk about the distinction between “Ethiopian” and “Foreign” organizations only (see 08ADDISABABA2482, 08ADDISABABA3100).

ever, explicitly rejected a right to judicial appeal for foreign organizations “by arguing that such organizations would only be operating in country by invitation from the GoE and, therefore the GoE could rescind the invitation at any time without requiring the intervention of the judiciary”. The US embassy accepted this argument as “pertinent for foreign-funded NGOs focused on political activities through an agreement with the GoE”, but noted that “it ignores the denial of judicial appeal to the far broader grouping of foreign-funded NGOs engaged in non-prohibited development activities” (08ADDISABABA2103).

Finally, the US Embassy and the three North-Western ambassadors aimed at shielding or exempting their own assistance programs. US Assistant Secretary Kramer, for instance, “suggested creating possible carve-outs” for US-, EU-, and UN-funded projects, “citing a recent similar initiative in Jordan”. Meles, however, pointed to the already existing “carve-outs” (08ADDISABABA2945). Indeed, already the first 2008 draft stated that the CSP would not be applicable to “international or foreign organizations operating in Ethiopia by virtue of an agreement with the [Ethiopian government]” (CSP 2008). This problem was, therefore, rather treated as an issue that concerned the implementation of the CSP (see below).

3.3 *Implementation*

A major concern that permeates the US embassy cables is the donors’ worries that their own foreign assistance programs might be significantly affected by the new CSO law. In mid-June, for instance, the US Embassy reported that the “now inevitable” CSP “will likely force the termination of all U.S. and other donors’ foreign assistance for democracy and governance, human rights, conflict resolution, and our important advocacy programs, particularly on behalf of women’s rights” (08ADDISABABA1672). The Ethiopian response to these concerns has basically consisted in “assurances of exceptions [to the new restrictions] for U.S. assistance programs” (08ADDISABABA1850). More generally, Prime Minister Meles emphasized that “continued involvement of foreign NGOs in political reform and advocacy” was acceptable if and when “there is a contract between the foreign NGO and a government entity for a specific time period and that the NGO would not become a permanent fixture or part of the political reform or advocacy issue” (08ADDISABABA1593). For the US government, however, the problem persisted that, even if US programs would be exempted from the restrictions, the CSP would still “prohibit significant support to Ethiopian CSOs to assist with the implementation of such programs, undercutting the potential to build local CSO capacity to sustain civil society’s watchdog role over government.” (08ADDISABABA2482).

The issue of reporting requirements of local CSOs was also discussed with a view to their future implementation. When Assistant Secretary Kramer noted “that the new Civil Society Agency’s reporting requirements would be onerous on NGOs, Meles assured that copies of existing NGO reports provided to their funding agencies would suffice to meet the stipulated reporting requirement and that the CSA would strive to minimize additional reporting requirements” (08ADDISABABA2103).

Generally, the Ethiopian government continuously argued that “the overwhelming part of foreign and local NGO activity in Ethiopia” would not be affected by the law and that implementation will be narrowly focused on “the area of internal politics” (08ADDISABABA2561). Also, Prime Minister Meles suggested that, in order to “overcome the bitter and ‘poisonous’ discussion” on the draft law, it would be better to quickly adopt the CSP and “then work cooperatively with the CSO/NGO groups and donor community to make the new legislation work” (08ADDISABABA2105). In fact, once the Proclamation was approved by parliament, the donors started to focus on implementation. The three North-Western ambassadors, for instance, “underscored Ethiopia’s sovereign right to oversee and regulate all foreign activities but added that, depending on how the law is implemented, NGOs may find it impossible to operate in some areas, such as democracy and governance”. They, therefore, emphasized “that there needs to be close coordination and dialogue to

ensure that the implementation of the law will not be harsh or so restrictive as to force some NGOs to close operations” (09ADDISABABA63). Likewise, the EU, in its official response to the adoption of the CSP, expressed the hope “that the law will be implemented in an open-minded and constructive spirit” (EU 2009). The US Embassy, on its part, reported to Washington that the US, on behalf of the group of international donors, would “lead efforts to monitor the implementation of the CSO law in an effort to moderate potential excesses and prevent harsh implementation” (09ADDISABABA63).

3.4 *Problem definition*

The negotiations also revealed fundamentally different perceptions of the main political challenges facing Ethiopia. In the Ethiopian government’s account, the new CSO law basically addresses two key problems with democracy and civil society (support) in Ethiopia.

The first one concerns a lack of regulation of CSOs. This has, first and foremost, negative implications for national security: As Prime Minister Meles explained to the three ambassadors, the new law was needed “to ensure CSOs and NGOs are truly focused on helping the development of the country and not involved in illegal activities or sponsorship of extremist groups” (08ADDISABABA1593). In general, “anti-democratic sectors of society” are depicted as a crucial challenge to democracy and stability; this explicitly includes “opposition leaders”, which are seen as associated with the former Derg regime, opposed to the (democratic) constitution of the country and unwilling to engage in a genuine dialogue and refrain from violence (08ADDISABABA2078). EPRDF’s central committee member and political advisor Bereket Simon was even more explicit and argued “that NGOs are working closely with terrorists and undermining Ethiopia’s constitution” (08ADDISABABA2103). In a conversation with US Assistant Secretary of State Kramer, “Meles claimed that the intent was to divide NGOs between those engaged in political activities and those not. For those not engaged in political activities, Meles argued the purpose of the law was to provide transparency about funding and accountability about expenditures.” (08ADDISABABA2103) In another discussion with Kramer, Meles referred to this problem as a “‘lack of accountability’ between civil society organizations and their constituents” that would be addressed by the new law: “Since foreign funding is ‘not earned,’ he argued, it produces money streams independent of its membership, automatically ‘inverting an organization’s accountability away from its constituents’ and creating ‘networks of rent-seeking’ NGOs and NGO heads.” (08ADDISABABA2945)

The second problems, from the Ethiopian government’s perspective, concerned a lack of commitment or ownership of democratic norms in Ethiopian society: “to become a strong and vibrant democratic state that advocates for human/civil rights, it must have the political will and commitment to make sacrifices and to advance these issues” (08ADDISABABA1593). The challenge ahead, therefore, was rather about “building lasting democratic institutions such as the policy, army, and judiciary” (08ADDISABABA2078) than about empowering groups that might well threaten democracy and security.

The donor perspective was, of course, quite different. The three ambassadors, for instance, emphasized “the importance to allow NGOs to operate freely and unrestricted in Ethiopia because of the work they provide for the development of Ethiopia” (08ADDISABABA1259). The US government, in particular, continuously referred to the “backsliding on democracy and human rights” that Ethiopia had experienced since 2005 (08ADDISABABA2078) This observation of a shrinking political space was explicitly rejected as factually wrong by the Ethiopian government (08ADDISABABA2078; see also 09ADDISABABA258). The other way round, it is interesting to note that the US embassy took the concerns raised by the Ethiopian government as genuine: For the embassy, the meetings “were crucial in eliciting the fundamental belief among ruling party hard-liners such as Bereket, that CSOs are undermining Ethiopia by supporting terrorists” (08ADDISABABA2103). But the US did explicitly disapproved “the notion that foreign support to

civil society groups addressing democratic rights issues poses a threat to democratization” and also “rejected Meles’s assertion that foreign funding to enable domestic advocacy is undemocratic” (09ADDISABABA257). This already points to the crucial normative controversy that underlay the negotiations.

3.5 Normative premises

With a view to the normative premises at stake in the debate about civil society regulation/support (see Poppe and Wolff 2017), the Ethiopian government basically referred to sovereignty and ownership as key norms underpinning the planned CSO regulations. Prime Minister Meles, for instance, emphasized “the right of the nation to restrict foreign entities from participating in the domestic politics of Ethiopia”. He added that such restrictions are also needed with a view to the (shared) normative aim to promote sustainable democracy in Ethiopia, because “to become a strong and vibrant democratic state that advocates for human/civil rights, it must have the political will and commitment to make sacrifices and to advance these issues. To be sustainable, Ethiopia must achieve democratic standards on its own.” Exceptions to this basic norm can only be granted by the Ethiopian government; thus, “continued involvement of foreign NGOs in political reform and advocacy” was acceptable if and when “there is a contract between the foreign NGO and a government entity for a specific time period and that the NGO would not become a permanent fixture or part of the political reform or advocacy issue” (08ADDISABABA1593). Pointing to “a difference of opinion on the role of civil society”, Meles argued that, while “non-citizens may have the privilege of being involved on such [political] issues, they do not have a right to be involved” (08ADDISABABA2103). Explicitly referring to the principle of ownership, Prime Minister Meles also argued that “democratic institution building, the advancement of democratic values and the protection and promotion of human rights and civil rights must be born and developed by Ethiopians themselves” and “cannot, and must not, be imposed by outsiders or through money distributed to advance these issues because such measures are not sustainable”. “Without ‘ownership’”, Meles argued, “Ethiopia will not have a strong and sustainable democratic tradition” (08ADDISABABA2105).

In their responses, US officials and the three ambassadors did not explicitly reject these normative arguments but tried to qualify them. According to a US embassy report, “the international community recognizes the need for enhanced regulation and oversight to regularize registration and establish procedures”, but emphasized “high anxiety that the new law will so restrict NGOs that their operations would be forced to close” (08ADDISABABA1593). With a view to the issue of ownership, the French Ambassador “argued that Ethiopia is on the democratic path so it is Ethiopian in nature. Providing assistance will help the process move faster, why deny groups assistance and retard such development?” Meles responded that “the plague of money also allows many groups to focus their work on definitions established by the donors in order to secure funding”. To make sure foreign assistance and foreign CSOs help democracy, such support had to come “at the request of the government not imposed from the outside” (08ADDISABABA2105). Another counter argument made by donors is exemplified by Assistant Secretary Kramer’s suggestion “that Meles view donor-funded projects as transitional, designed to last only until such organizations are domestically independent and accountable” (08ADDISABABA2945). Likewise, in a public discussion on Ethiopia in Washington, Kramer explicitly acknowledged that “indigenous movements [should] lead the way” but argued that, given the lack of domestic funding, foreign donors are needed “for an interim period” in order to “give people the opportunity to establish roots and a firm foundation so that over time they don’t need to be relying or dependent on foreign funding” (Kramer 2008).

In the course of this normative controversy, also diverging notions of democracy and democratization were frequently articulated (see 08ADDISABABA2078; 08ADDISABABA2103). Indeed, in the midst of the CSP negotiations, Prime Minister Meles suggested to establish “an on-going senior bilateral dialogue on democracy and human rights issues”, a proposal that was supported by the

US Embassy (08ADDISABABA2078). To the extent that such a dialogue occurred, the picture that emerges from the embassy cables is characterized by the Ethiopian government explicitly articulating differences in norms and values, while the US government recognizes such differences in its internal reporting. On the part of Ethiopian government, one core argument was that shared values, and a shared belief in “universal democratic principles”, would still take particular shapes in individual countries and would, therefore, develop in a specific way also in Ethiopia, “in accordance with its own culture” (09ADDISABABA107; see also 08ADDISABABA2078). The US embassy, in turn, recognized the specific “guiding philosophy” that characterizes the Ethiopian leadership, namely a notion of “Revolutionary Democracy” understood “as a top-down obligation of convincing rural Ethiopians of what is in their best developmental and governance interest and providing the structures to implement that until the people can do it for themselves” (09ADDISABABA1469). In a conversation of US Ambassador Yamamoto with Prime Minister Meles in July 2009, Meles argued specifically that provisions in those laws, including the CSP, “which western and donor countries perceive as restrictive”, were indeed “counter to, and in conflict with, the ‘old paradigm’ of democracy”, but not necessarily “in conflict with democracy in Ethiopia”. The Prime Minister went on to suggest that the two governments, rather than trying to resolve “the minute policy issues”, should address the “fundamental” differences between these “rival paradigms”, not with a view to resolving them but in order to clarify the normative foundations of the bilateral relationship: “While you may not agree with us,” he stressed, “you will understand where we are coming from, and vice versa.” In response, the US ambassador is quoted, “stressed that ‘it will be important for the U.S. leaders to hear the philosophy behind Ethiopia’s pursuit of these laws and whether they build or detract from strong institutions. He noted that if these laws, when taken together, close political space, it will be an issue.” The US embassy concluded that “Meles finally acknowledged verbally Ethiopia’s fundamental difference with western approaches to democracy and development”: The “prevailing ideology” within the Ethiopian ruling party, “Revolutionary Democracy”, the embassy recognizes, “is fundamentally different from any sense of ‘democracy’ as commonly understood in the United States or western countries”; it is basically “a top-down approach through which political, economic, and even social activity must be either directed or condoned by the government (and ruling party)” (09ADDISABABA1770).

4. IMPLEMENTING THE CHARITIES AND SOCIETIES PROCLAMATION: THE CONSEQUENCES FOR CIVIL SOCIETY (SUPPORT)

As a result of the negotiations, the CSP was approved in a slightly modified version that remained fairly restrictive but, as will be seen, opened up certain possibilities for local NGOs and international donors to adjust.

4.1 *Consequences for local civil society*

According to a study by Kendra Dupuy and colleagues, “Ethiopia’s NGO sector changed dramatically following the 2010 implementation of the Charities and Societies Proclamation” (2015: 431). These effects are mainly due to two factors: the dependence of almost all local NGOs on foreign funding (Hailegebriel 2010: 20–21; Yenashew 2012: 373–374); and the fact that, prior to 2009, a broad range of organizations conducted projects in the broad area of democracy, governance and human rights that the CSP prohibits for foreign-funded organizations (FFS and Atos 2011: 28). When comparing the situation before (2009) and after (2011) the implementation of the CSP, it becomes clear that many (574 out of 2,275) local NGOs failed to re-register, while those that succeeded overwhelmingly (1,330 out of 1,701) did so by registering as “Ethiopian resident” organizations (Dupuy et al. 2015: 432, Table 2). In order to continue receiving foreign funding, many NGOs had to adjust and/or rebrand their activities, focusing on development-related issues or service delivery (see Dupuy et al. 2015: 431–5; ECSF 2016: 44; Yenashew 2012: 375–6). For these

efforts at rebranding and adjustment, the revision of the draft CSP to exclude development-related purposes from the list of restricted activities proved crucial.

While some human rights and civic advocacy groups rebranded and abandoned their rights-oriented work, others closed down their organization. According to one estimate, “only 12 or 13 of the 125 previously existing local rights groups” survived the implementation of the CSP (Dupuy et al. 2015: 433; see also Yntiso et al. 2014: 46). Two prominent examples include the Ethiopian Human Rights Council (EHRCO), an organization that monitors and documents human rights violations, and the Ethiopian Women Lawyers Association (EWLA), a renowned association advocating for women’s rights. Re-registration, however, was far from easy, and the loss of foreign funding has meant that the two organizations were forced to cut 70–85 percent of their staff and scale down their activities accordingly (Amnesty International 2012: 13; see also Dupuy et al. 2015: 441; Yenashew 2012: 376).

Overall, the financial viability and the organizational capacities of Ethiopian CSOs “have been reduced significantly over the last five years or so” (ECSF 2016: 8). Still, the consequences of the CSP have been selective. In fact, between 2008 and 2014, while CSOs working on rights issues “suffered setbacks and decline”, those organizations “engaged in development activities and service delivery (e.g., Ethiopian Resident Charities and international organisations) experienced growth” (Yntiso et al. 2014: 18). Furthermore, the CSP “has had little noticeable effect” on the broad range of CSOs that are outside the sector of national-level NGOs, that is, “for most community based organizations operating at the local level, for organizations registered and working in one region, and for membership-based organizations” (Hayman et al. 2013: 15).

4.2 *Consequences for international civil society support*

International donors likewise had to adjust to the new regulatory framework, but generally have been less affected by the CSP. International NGOs have been mostly successful in re-registering with the CSA, and their number in Ethiopia has dropped only marginally from 266 (2009) to 202 (2011); still, they also had to rebrand and cut support to local NGOs that continued to work in the restricted areas (Dupuy et al. 2015: 432, 435–6; ECSF 2016: 44). Overall data on foreign aid to Ethiopia collected by the donor-funded Tracking Trends in Ethiopian Civil Society (TECS) initiative shows that “[f]unding to CSOs remained fairly static over the period 2008 to 2011 and then increased substantially in 2011/12” (TECS 2013: 5). According to a rough estimate, about three quarters of this foreign civil society aid are channeled through (a small set of) international NGOs and, more specifically, through humanitarian “emergency” funds, while a much smaller percentage goes to Ethiopian (“resident”) NGOs. The majority of donor agencies consulted for this study stated “that the Proclamation has not affected their funding mechanism either in the choice of sector or the category of CSO funded”. A relevant change, however, is the reduction in the number of local CSOs that are funded directly (from 43 in 2009 to 20 in 2013) and an increasing reliance on “umbrella or network organisations, which pass on grants to their partners or members”. Furthermore, civil society support is increasingly channeled through three major civil society funds: the World Bank-managed multi-donor initiative Ethiopian Social Accountability Program (ESAP2), the European Commission-funded Civil Society Fund (CSF2), and the multi-donor Civil Society Support Program (CSSP) (TECS 2013: 3–5).

What is important for the issue at stake is that two of the international civil society funds (ESAP2 and CSF2) are officially categorized as “domestic” and can, therefore, also support strictly “Ethiopian” NGOs that work in the restricted areas (TECS 2013: 5). This status reflects “a special arrangement” between the donors and the Ethiopian government (ECSF 2016: 15). This arrangement, on the one hand, shows how donors have been able to negotiate some (limited) space for governance- and rights-oriented civil society support. On the other, however, it also guarantees a veto position to the Ethiopian government given that the latter is directly involved in the steering committees (see Yntiso et al. 2014: 20, 55). In the words of the then head of the EU Delegation in

Ethiopia, Xavier Marchal, the strategy has been “to work keeping government authorities in the picture, because this is their country”. In this way, it has been “possible to do a lot of things” (quoted in EU 2012). More specifically, CSF2 has funded civil society activities in areas like of “access to justice”, “human and women’s rights”, “conflict transformation” and “consolidation of democracy”, while ESAP 2 “enabled certain CSOs, including rights advocacy organisations to access external funds” (Yntiso et al. 2014: 59).

The third international civil society fund (CSSP) has not been exempted from CSP restrictions and, therefore, largely focused on “Ethiopian resident” organizations (CSSP 2015: 32–33). According to a mid-term review of the program it has, however, been important in assisting CSOs to manage their finances in line with the stipulations introduced by the CSP. A key focus of the program has been on improving the relations between CSOs and the government at various levels, including with the Charities and Societies Agency (Itad 2015: 2, 6). In direct response to the CSP, the Donor Assistance Group (DAG) in Ethiopia also established an Adaptation Facility (AF1 and AF2) that assisted CSOs in coping with the changing legal environment (Yntiso et al. 2014: 18).

A few individual organizations and programs unsuccessfully tried to secure an exemption from the CSP and left Ethiopia in response. The Heinrich Böll Stiftung, for instance, closed its office in Addis Ababa after the German government’s attempt to negotiate a special status for Germany’s political foundations had failed (Carothers and Brechnmacher 2014:15). Also, the USAID-funded Peace in East and Central Africa II Program, which supported local organizations in the area of peace-building in Kenya’s border areas with Somalia, Ethiopia, Sudan and Uganda, canceled its activities in Ethiopia after “a number of attempts [...] to secure an exemption for cross border peace building” had failed (USAID 2012b: 6).

Another strategy of international donors has been to work with registered Ethiopian NGOs that managed to secure exemptions from the CSP. It is unclear which and how organizations did manage to get this status, but examples of exempted organizations include Justice for All-Prison Fellowships of Ethiopia as well as the Peace and Development Center. USAID, for instance, cooperates with these two NGOs in the area of democracy and governance (see USAID 2012a: 62, 66; USAID 2017). Still, in response to a lack of policy space, USAID generally decided to dramatically reduce its activities in the area of democracy and governance and, instead, “include governance as a cross cutting issue through improved public sector accountability, conflict sensitivity and support to civil society” (USAID 2012a: 5). In contrast, civil society support by the National Endowment for Democracy (NED) has increased significantly, to 1,4 million USD in 2016 (NED 2017). In addition to NED core grantees from the US (Solidarity Center and the Center for International Private Enterprise), the endowment recently supported the above-mentioned Peace and Development Center in the area of “human and democratic rights education” as well as a series of nongovernmental partners that are not specified (NED 2017).

5. CONCLUSION

Partial and partisan as they necessarily are, the US embassy cables released through Wikileaks document a process of negotiation between the Ethiopian government and North-Western donor governments that simultaneously deals with quite different issues. First, there is the explicit and concrete discussion on the (draft) NGO law. Referring to the provisions in the planned legislation (policy formulation) and to what these might mean in actual practice (implementation), the external actors raise general concerns and propose specific changes, while the Ethiopian side responds with justifications, reassurances and concessions. This discussion is, second, embedded in a more general debate on the appropriate role and regulation of NGOs in Ethiopia (problem definition) as well as on the norms and basic values that underpin the domestic regulation or the international support of civil society organizations (normative premises). The latter type of discussion, at times, touches upon disagreements at an even more fundamental level that concerns different notions of democracy that underlie the diverging viewpoints.

With a view to the purpose of the negotiations, the parties to the conflict clearly did not aim at negotiating an NGO law that could be agreed upon by both sides (from the outset, this was clearly not a viable aim to begin with). The real aim was rather an informal, *de facto* agreement that would allow for an uninterrupted continuation of bilateral relations, including in the (minor) area of governance and democracy support, in spite of the obvious and persisting differences over the substantial issue at hand. This emerges very clearly as the shared aim of both sides. In this sense, then, what we observe is a process of high-level communication in which the relationship between the Ethiopian government and the “donor community” in general and the US in particular is negotiated. As a result, the continuation of a practice of ongoing negotiations (“dialogue”) becomes the aim, and the benchmark of success, of these same negotiations. At the different levels (of depth) of the negotiations, this is the overall rationale that helps understand what motivates the parties: At the concrete, policy-oriented level, “donors” wanted to secure as much of the past practice of “cooperation” that it was used to, while the Ethiopian side was willing to make some (minor) concessions in order to guarantee basic continuity in bilateral relations; at the level of norms and values, dialogue mainly served to mutually affirm and recognize that there are diverging viewpoints but that the relationship is strong enough to withstand such differences and even enables such a frank controversy.

As a result, the Ethiopian government was able to basically push through the CSP as originally envisaged, with only minor revisions. This certainly reflects the weak bargaining position of external actors that were not willing to risk cooperative relations with an important regional ally. But it also corresponds to the – quite remarkable – argumentative strength of the Ethiopian government vis-à-vis the “donor community”. At the discursive level, the *normative* position of the Ethiopian authorities that consistently emphasized ownership and the need to construct its own version of democracy was mostly accepted by the North-Western ambassadors and other US representatives. The latter rather made the *empirical* argument that the Ethiopian government’s strategy was, in fact, aimed at repressing dissent. This claim, valid as it may be, was easily rejected by the Ethiopian side, which could simply present an empirical counternarrative (highlighting the risks to societal peace and political stability as posed by opposition-aligned CSOs).

The underlying logic of the negotiations – as an exercise in relationship management – is clearly reflected in the consequences they have had for international civil society support in the country. While the Charities and Societies Proclamation has had significant effects on local civil society organizations, its effects on international civil society support have been rather limited. By and large, donors either unilaterally or in cooperation with the Ethiopian government adjusted existing civil society programs, bringing them in line with, or exempting them from, the new regulatory framework. The actors that have obviously suffered from these political dynamics at the level of intergovernmental relations are the human rights groups and activists in Ethiopia.

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