



INTERNATIONAL GRANTMAKING SYMPOSIUM

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GRANT PAYMENTS AND GIVING TO CHALLENGING MARKETS

PANEL DISCUSSION

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THE CENTER FOR
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The University of Pennsylvania

REGULATORY FRAMEWORK

- **Post 9/11 Measures Change the Regulatory Landscape**
- Financial Action Task Force Recommendation 8
- PATRIOT Act
- Bank Security Act
- De-risking
- UN Security Council Resolution 2462



FATF'S RECOMMENDATION 8 ON NPOs

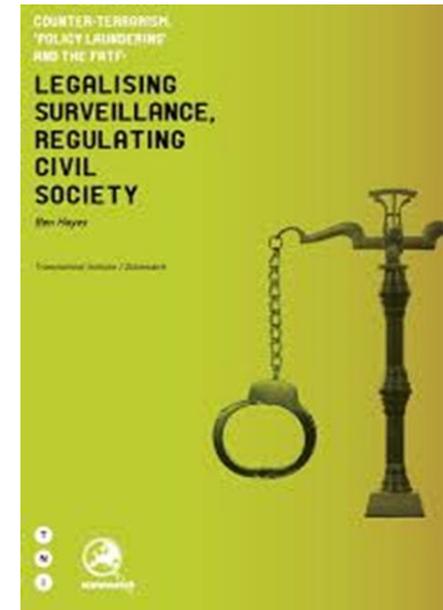
Recommendation 8 on NPOs adopted in 2002

- Called NPOs “particularly vulnerable” to terrorist abuse, without supporting evidence
- Required states to “ensure” charitable funds not diverted to terrorism

Implementation led to over-regulation by many states seeking to either:

- Get a good rating from FATF or
- Abuse the FATF process in order to suppress civil society

2012 report from Statewatch documented this problem



SUCCESSFUL CIVIL SOCIETY RESPONSE

- 2012: Global NPO Coalition on FATF formed, begins engagement with FATF to revise R8 and associated guidance
- By June 2016 FATF has revised R8 and all guidance docs to remove “particularly” vulnerable and calling for a risk-based approach that produces measures that are proportionate to risk and do not unduly dispirit the activities of legitimate NPOs
- Many governments have not updated their rules to implement the new approach



THE PATRIOT ACT AND ITS PROGENY

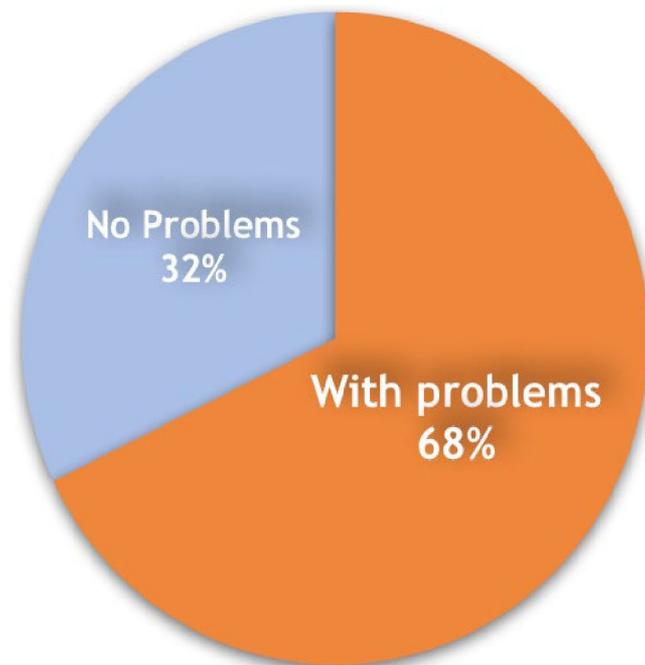
- Broadening the definition of **material support of terrorism**
- Expansion of powers under **sanctions laws** (terrorist listing “pending investigation,” freezing funds, lack of due process)
- **Executive Order 13224** – sets the template for future listings and restrictions
- **Bank Secrecy Act** – increased reporting by banks, increased enforcement against banks
- **Derisking** – limits on NPO access to banking services for international programs: the perfect storm created by all of the above



RESEARCH SHOWS “DERISKING” PROBLEM WIDESPREAD

Charity & Security Network study 2017

- 2/3 US charities working internationally having problems
- Issues include delays in transfers, account closures, excessive information requests
- 42% forced to carry cash to get funds through
- No recourse



Charity Finance Group (UK) 2018

- 79% of groups having financial access problems
- Same kinds of problems as US NPOs



IMPACT ON RECIPIENT NPOs

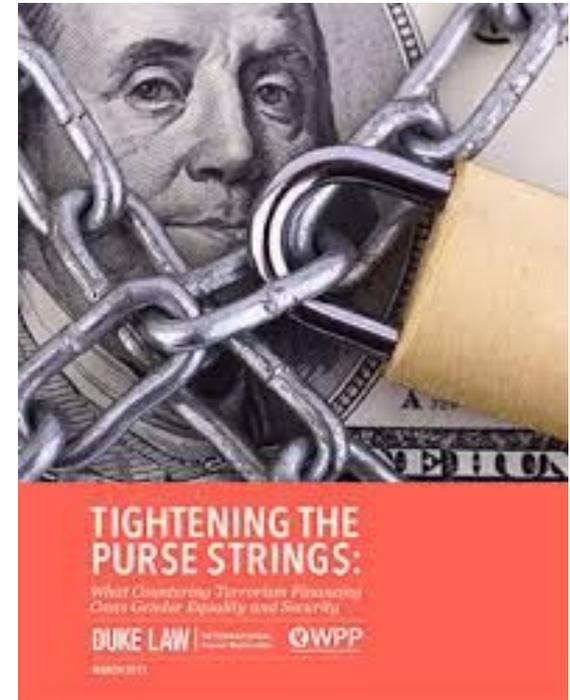
Overseas Development Institute and London School of Economics, case studies

on Yemen, Syria, Somalia and Palestine.

Found security prioritized over the humanitarian imperative, derisking exacerbates problems

Duke Law School Human Rights Clinic – 2017

- Documented heavy derisking toll on women's Grassroots and rights grantees



REGULATORY FRAMEWORK

- **SYRIA: Conservative application of Sanctions: OFAC General License 11A**: Nongovernmental organizations are authorized to export or re-export services to Syria...in support of the following not-for-profit activities: (1) Activities to **support humanitarian projects**; (2) Activities to **support democracy building** in Syria...; (3) Activities to **support education in Syria**...; (3) Activities to support non-commercial development projects directly benefiting the Syrian people...; and (5) Activities to **support the preservation and protection of cultural heritage sites in Syria**...
- **VENEZUELA**: Widespread sanctions, but not specifically barring humanitarian aid. Banks not purchasing the bolivar, will not transfer funds there.

Possible solutions: Cryptocurrency, multiple banking partners...



GRANT PAYMENTS | REGULATORY COMPLIANCE

Regulatory Compliance with relevant legal frameworks in the US as well as grantees' home countries.

Outflow Restrictions

- Impact charitable funds that leave the donors' country

Typically, such laws aim to prevent the use of charitable funds to finance organized crime and terrorism, prevent fraud or personal gain.

Inflow Restrictions

- Recipient country-specific laws impacting inflow of foreign philanthropic funding.

Typically, grantees are expected to comply with additional requirements.



OUTFLOW RESTRICTIONS

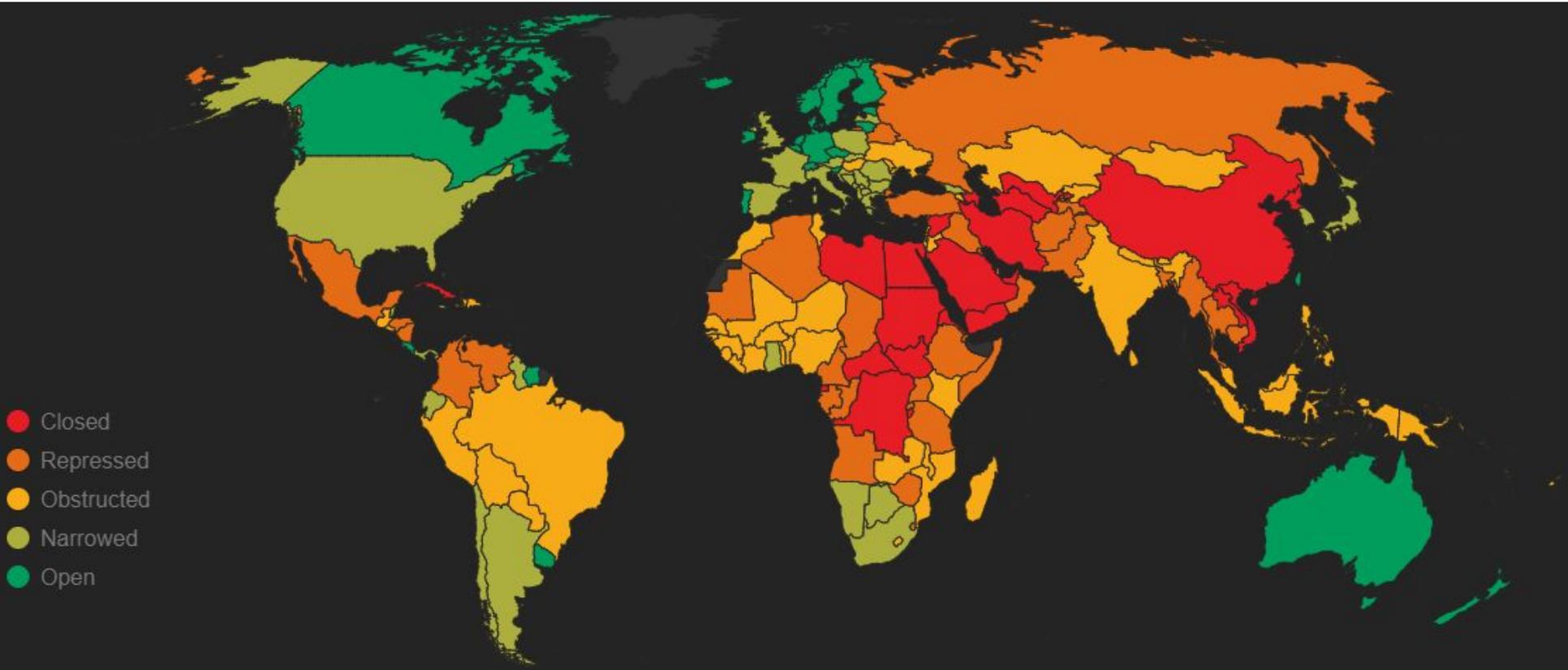


Cross-border charitable giving needs to follow US laws and provide for additional compliance checks

- USA PATRIOT Act
- Executive Order 13224
- HR4 (the Pension Protection Act)
- US Treasury Department Voluntary Guidelines for International Grantmaking
- Foreign Corrupt Practices Act (FCPA)
- Office of Foreign Assets Control (OFAC)



INFLOW RESTRICTIONS | COUNTRY LAWS



Source: Civicus Monitor 2019



“Difficult legislative and operational environment”
is one of the main challenges nonprofits must face globally.

World Economic Forum



INFLOW RESTRICTIONS | COUNTRY LAWS

109 countries
have **closed**,
repressed or
obstructed
civic space



Source: Civicus State of Civil Society Report, 2018



INFLOW RESTRICTIONS | COUNTRY LAWS

- **Requirement to obtain prior approval (certification)**
 - Ex. China, India, Pakistan, Egypt
- **Stigmatization (foreign agent laws)**
 - Ex. Russia, Hungary, Venezuela
- **Limiting activities and focus-areas (human rights, advocacy etc.)**
 - Ex. China, Venezuela, Indonesia, Egypt
- **Control of resources (bank account, approval to access funds)**
 - Ex. China, Uganda
- **Additional taxes imposed on foreign funding**
 - Ex. Russia, Hungary, Nicaragua



OBTAIN PRIOR APPROVAL (CERTIFICATION)

“Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China” (2017)

International organizations seeking to operate in or give into mainland China are **required to receive government approval** in 1 of 2 ways:

- Register a “Representative Office” (permanent presence)
- File for a “Temporary Activity” (per-project process)

By the end of May 2019:

- **394** unique foreign NGOs have established representative offices
(out of a total 478 offices registered)
- **549** unique foreign NGOs have carried out temporary activities
(out of a total 1,738 activities begun or completed)
- **≈900** unique foreign NGOs have worked or are working legally in China



OBTAIN PRIOR APPROVAL (CERTIFICATION)

HOW IS IT AFFECTING GIVING?

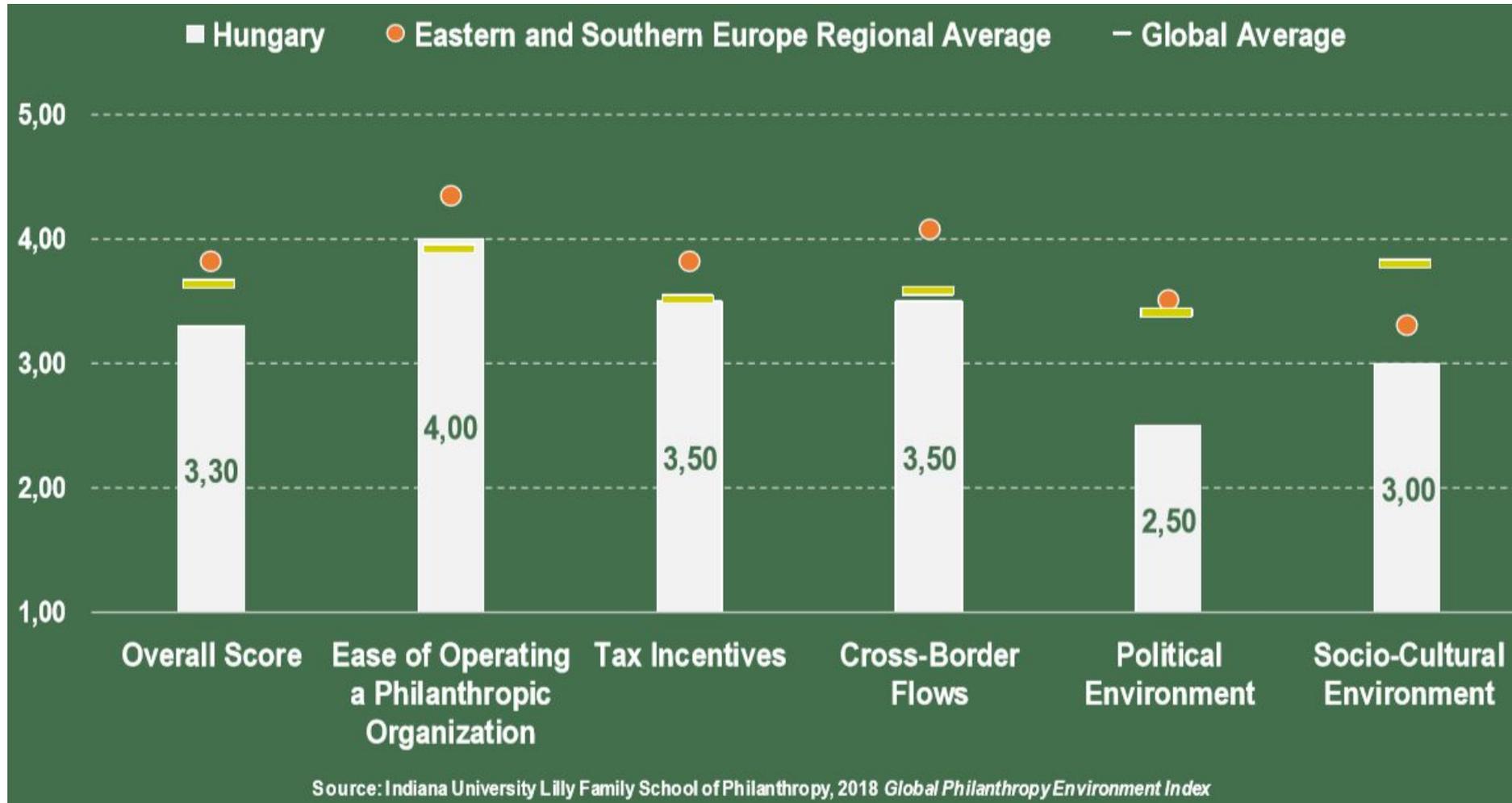
- Requires more time, effort, money from donors
 - Approvals required from multiple organizations, including public security
 - Approvals not merely formalities — not everyone able to run the gauntlet
- Limits who can be a grantee/partner organization within China
 - Domestic partners/grantees must be formally registered in China
- Can limit where in China international NGOs are able to give/work
 - Authorities in certain provinces may be less welcoming

SOME INTERNATIONAL NGOs ARE ASKING THEMSELVES . . .

- Should we continue to work in China? Or is our money more efficiently/effectively spent elsewhere?
- What if we can't get registered/get our filing approved?
- Could our activities elsewhere harm our legal status in China?
- How do we best support our long-standing domestic partners?



STIGMATIZATION (“FOREIGN AGENT” LAWS)



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“Law on the Transparency of Organizations Supported from Abroad”

(June, 2017)

The Law applies to all Hungarian associations and foundations that receive (or disburse) foreign funding (above approx. \$25,000+) in a tax year. Such organizations are **required** to notify the court to be **registered as “organizations supported from abroad”**

Publicly labeled - must indicate their status on their website, publications, press materials, and the status is published on the CSO Registry and on the electronic portal of the Ministry of Human Resources.

HOW IS IT AFFECTING GIVING?

- Additional reporting requirements on the foreign resources (above \$1,800/donor/tax year)
- Requirement to provide donor’s name and location
- Failure to comply may result in high fines and possibly termination



STIGMATIZATION (“Foreign Agent” Laws)

Law "On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent" (2012)

- Nonprofit organizations that receive foreign funding have to register as “foreign agents”

HOW IS IT AFFECTING GIVING?

- Some donors may shy away from granting there
- Some local charities prefer not to receive foreign funding for fear of being labeled as a “foreign agent”



LIMITING ACTIVITIES (Focus Areas)

- **Egypt:** 2017 NGO Law 70 was approved, requiring all NGOs to re-register under the Ministry of Social Affairs.
- **Saudi Arabia:** 2016 CSO Registration Law - restricts orgs that “contradict public morals or breach national unity”
- **Brunei:** death by stoning for homosexuality
- And the list goes on...



CONTROL OF RESOURCES (Bank Accounts)

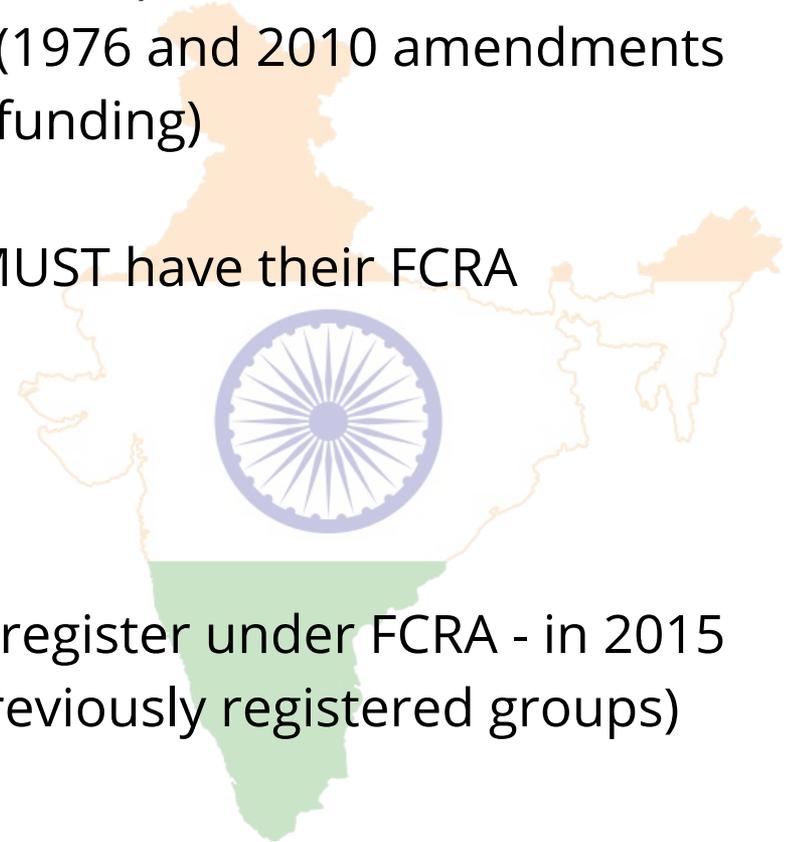
India (prior approval and control of resources):

Foreign Contributions Regulation Act (1976 and 2010 amendments that brought new challenges for foreign funding)

- Each charity receiving foreign funds **MUST** have their FCRA registration

HOW IS IT AFFECTING GIVING?

- It is becoming increasingly difficult to register under FCRA - in 2015 over 13,000 organizations (~50% of previously registered groups) were expunged from the list



ADDITIONAL TAXES ON FOREIGN FUNDING

Hungary | “**Law on Amending Certain Tax Laws and Other Related Laws (Act XLI/2018)**” (July, 2018)

The Law introduced a **special tax of 25%** on immigration-related activities.

Example of taxable activities: media campaigns, coalition and network building, and advocacy activities that directly or indirectly portray immigration in positive light.

WHO IS RESPONSIBLE?

The tax is imposed primarily on donors. If donors fail to pay, the obligation transfers to the grantees.



ADDITIONAL TAXES ON FOREIGN FUNDING

Russia | Law "On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent" (2012)

- Imposes a **tax of 6 to 20%** on foreign grants



THANK YOU!

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