



International Meeting on the Enabling Environment for Philanthropy

Calouste Gulbenkian Foundation
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Background Paper

Worldwide, philanthropy is facing a concerning trend as civil society organizations deal with heightened control and excessive, unwarranted restrictions on funding, both locally and internationally. In the domestic arena, barriers on the ability of civil society organizations to incorporate, operate and receive funding are pervasive in far too many locations. With respect to the international context, over the past several years, dozens of countries have adopted new laws and regulations that hinder cross-border funding, often under the guise of protecting security or preserving sovereignty. As a consequence, grantmakers and the groups they seek to support are faced with additional, onerous obstacles and administrative requirements or, worse yet, outright bans on the receipt of foreign funding by civil society organizations (or other non-profit groups). Indeed, as grantmakers face increasing impediments to supporting civil society, this growing trend has profound implications for philanthropy infrastructure organizations.

In March 2016, WINGS will host a workshop to discuss these and other issues related to the enabling environment for philanthropy. The goal of this workshop is to advance our understanding and respond to the trend of increased control, unsupportive legal and regulatory frameworks and excessive, burdensome restrictions on funding in both domestic and cross-border settings. Is there a niche role for infrastructure support organizations to address collectively the problems faced by local and cross-border grantmakers and social investors?

The workshop will provide an opportunity for WINGS members to (i) consider the current situation regarding the enabling – or disabling – environment for philanthropy; (ii) discuss the role of philanthropy support organizations that are concerned about these matters; (iii) explore possible strategies and approaches to address these barriers and improve the giving environment; and (iv) produce a document or tool to be used widely by philanthropy infrastructure leaders in their advocacy for an enabling environment for global philanthropy.

Setting the Scene

There are laws, regulations and onerous, confiscatory policies in numerous jurisdictions that restrict the ability of civil society organizations to register, operate and receive funding. According to a report presented to the UN Human Rights Council in 2013, these laws and regulations effectively can “strangle [civil society organizations] ...out of existence.”¹ Moreover, restrictive bureaucracies drain resources, both financial and human, by consuming large amounts of time and energy. Civil society engagements with regulators can become overwhelmed with legal and financial compliance requirements. This in turn can unduly obstruct their legitimate work focused on developing and executing substantive and significant interventions aimed at promoting the public good.

For example, in Nepal, the Development Cooperation Policy of July 2014 mandates development partners to channel all development aid through the Ministry of Finance. Civil society organizations attempting to access development assistance must be registered with the Social Welfare Council and obtain prior approval for the programs for which they seek funding. The result is that nearly all direct funding for Nepalese civil society organizations has been halted.² In Ethiopia, the 2009 Proclamation to Provide for the Registration and Regulation of Charities and Societies prescribes that Ethiopian charities and societies may not receive more than 10 percent of their total income from foreign sources. This proclamation has had a major adverse impact on non-governmental and community-based organizations in that country: “[b]etween 2009 and 2011, the number of registered civil society organizations in Ethiopia decreased by 45 percent.”³

In this climate, too often the media plays a negative role by portraying civic organizations as unpatriotic or acting as “foreign agents.” In many and varied locations, these are difficult times for civil society organizations and the donors and funders who support, or would like to support, their efforts. Research conducted by the International Center for Not-for-Profit Law revealed that since 2012, 98 laws limiting freedom of association or assembly have been proposed or enacted worldwide. While approximately half of these laws place restrictions on the registration and operation of civil society organizations, another third hinder cross-border philanthropy. These encumbrances on civil society are not restricted to a few countries or regions;

¹ “In Kenya, Averting a Move to Strangle Civil Society With the Financial Noose,” Maina Kiai, www.opendemocracy.net/openglobalrights/maina-kiai/in-Kenya-averting-move-to-strangle-civil-society-with-financial-noose, 18 Dec. 2013

² Douglas Rutzen, “Aid Barriers and the Rise of Philanthropic Protectionism,” *International Journal of Not-for-Profit Law*, 17 (1) (March 2015) p. 15,

³ *Ibid.*, p. 14.

rather, they are present across the globe.⁴ In Egypt, for instance, civil society organizations fall within the ambit of Law No. 84 of 2002 which includes, amongst other provisions, a prohibition on unregistered groups, bans against groups engaging in political activity, the ability of regulators to transfer assets and close organizations without due process, and a requirement that groups seeking to cooperate with foreign entities obtain prior approval from the government.⁵ In this context, CIVICUS noted that several Egyptian civil society organizations are under official investigation by the authorities and, "...under the draconian anti-protest and other anti-terrorist laws, many have been sentenced to years in prison due to unfair trials."⁶

While in India, Ravi Nair, the Executive Director of the South Asia Human Rights Documentation Centre, observed in 2013 that the "...government's approach to foreign funding for human rights work is probably as draconian, or more, as that of Russia or apartheid South Africa."⁷ He went on to declare that the state used the Foreign Contribution (Regulation) Act, an archaic law on foreign funding for non-governmental organizations, "like a surgeon's scalpel, carefully and incisively stifling dissent and regulating non-state activity with any significant level of funding."⁸

Moving across to sub Saharan Africa, philanthropic activity is hampered in Nigeria by a number of policies including high registration fees, onerous and lengthy registration processes, the absence of tax incentives for donations by individuals and limited tax deductions for corporations. Furthermore, it is reported that Nigerian officials are increasingly skeptical about the value of cross-border philanthropy and especially outspoken in their criticism of foreign involvement in local projects. All of this comes with high transaction costs for cross-border financial flows and limits on currency outflows by individuals.⁹

One very recent case of a government curtailing the ability of civil society organizations to receive foreign funding occurred in 2015 when a law focusing on "undesirable organizations" was enacted in Russia and used to ban from the country several U.S. foundations including the Open Society Foundation, the Open Society Institute Assistance Foundation, the National

⁴ The Index of Philanthropic Freedom 2015, Adelman, C., Barnett, J., & Russell, K. Hudson Institute, p. 10, www.hudson.org/cgp

⁵ Ibid, p. 13.

⁶ Media Statement: "Human Rights Defenders and Civil Society Organizations Face Increasing Threats," 10 Dec. 2015, CIVICUS, www.civicus.org

⁷ Nair, Ravi, "Time to Challenge India for its Stranglehold on Funding for Rights Organizations," 12 Nov. 2013. OpenGlobalRights, www.opendemocracy.net

⁸ Ibid

⁹ The Index of Philanthropic Freedom 2015, p. 17.

Endowment for Democracy and the U.S.-Russia Foundation. In this instance, the government claimed that these entities “...pose a threat to Russia’s constitutional system and state security....”¹⁰ This latest impediment to philanthropic freedom in Russia follows the 2012 enactment of a law that targets “foreign agents” - - that is, foreign-funded non-commercial organizations engaging in “political activities” - - a term which, in the context of this law, is very broadly defined. As a result of this legislation, targeted organizations have been subjected to various forms of discrimination and increased monitoring of their activities. Furthermore, CIVICUS reported that several national civil society organizations have been forced to either close down or register as “foreign agents.”¹¹

In a statement released on 10 December 2015 in recognition of Human Rights Day, CIVICUS declared that, “...civil society organizations are facing severe restrictions on their basic rights, day to day operations and ability to raise funds through repressive laws, raids on their offices and other forms of bureaucratic harassment.”¹² In response to this circumstance, CIVICUS urged the international community to dedicate Human Rights Day 2015 to the protection and promotion of civil society organizations and human rights defenders.”¹³

Here, it must be emphasized that it is not exclusively in the context of politically contentious human rights-related activities and funding that disabling environments stymie philanthropic support from reaching groups and individuals in need in various locations. As indicated with the examples of Nepal, Ethiopia, Egypt, India and Nigeria, the limits, caps and restrictions placed on philanthropic and development support apply to a range of organizations engaged in a diverse assortment of activities, many of which do not fall within the ambit of human rights. Humanitarian aid,¹⁴ operations related to service delivery, health-care provision or environmental protection, and employment and job creation are also hindered or blocked by overly restrictive, complex and onerous legal-regulatory frameworks that surround access to philanthropic resources in many countries.

¹⁰ “Open Society Foundations ‘Banned’ From Russia, Philanthropy News Digest, PND News Alert, 2 Dec. 2015

¹¹ Media Statement: “Human Rights Defenders and Civil Society Organizations Face Increasing Threats,” 10 Dec. 2015. CIVICUS, www.civicus.org

¹² Media Statement: Human Rights Defenders and Civil Society Organizations Face Increasing Threats, 10 Dec. 2015, CIVICUS, www.civicus.org

¹³ Ibid

¹⁴ As pointed out by CIVICUS in its 2015 State of Civil Society Report: Despite its place at the forefront of emergency responses across the globe, civil society faces funding crisis and dire threats. Media Release, 7 July 2015.

By way of another illustration, take the following case in Kenya. In October 2012, a bill was introduced in Parliament to amend the Public Benefit Organizations (PBO) Act. The bill would have placed a limit on foreign funding for public benefits organizations, including non-governmental organizations, restricting such funds to 15% of their total budgets. It would have also required all funding for PBOs to be channeled through a government body, which would unilaterally decide which organization received funding and for what purpose. Fortunately, after what has been described as “massive local and international outcry,”¹⁵ these proposed amendments were defeated. If this bill had passed, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association reported that “[t]he humanitarian impact would have ... been immense: up to 20 million Kenyans could have lost access to basic public health care, while other services would have seen drastic cuts.” Furthermore, this amendment could have resulted in the loss of an estimated 240,000 jobs!¹⁶

At times, the origins and rationales behind certain laws and regulations may have been neutral or benign with regard to philanthropic freedom. Nonetheless, as is the case with foreign exchange regulations and capital controls in countries such as Venezuela,¹⁷ Argentina¹⁸ and Senegal,¹⁹ to name of few, these provisions may still act as barriers to legitimate philanthropic activity. In these instances, capital controls were used to halt currency devaluation and solidify exchange rates. It was not necessarily the intentions of these governments to restrict civil society or hinder access to funding. Yet, the unintended consequences and impacts of these measures often act to decrease or halt the flow of foreign capital to civil society organizations.²⁰

Next Steps

Unfortunately, the cases cited are not only illustrative of a widespread phenomenon, but they also appear to be indicative of a more permanent state of affairs. In fact, some commentators have asserted that “[t]he global trend towards shrinking civil society space is not temporary, but rather part of a broader shift in international life from a relatively benign post-Cold war

¹⁵ “In Kenya, Averting a Move to Strangle Civil Society With the Financial Noose,” Maina Kiai, www.opendemocracy.net/openglobalrights/maina-kiai/in-Kenya-averting-move-to-strangle-civil-society-with-financial-noose, 18 Dec. 2013

¹⁶ United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Human Rights Council Report, June 2013, A/HRC/23/39. “Civil Society’s Right to Seek, Receive and Use Resources – Human, Material and Financial.”

¹⁷ See The Index of Philanthropic Freedom 2015, p. 9

¹⁸ Ibid, p. 34

¹⁹ Ibid, p. 17

²⁰ See The Index of Philanthropic Freedom 2015, p 34

context to a more competitive and conflicted global environment. As such, the pushback is likely to remain with the aid community for a foreseeable future.”²¹

Against this background, how does WINGS, a membership organization in support of a strong, global philanthropic community striving to build more equitable and just societies worldwide, respond to these troubling trends? In the context of this environment, what is the role of infrastructure organizations in sustaining supportive legislative and regulatory frameworks for philanthropy? Are there ways that regional distinctions operate in how these disabling laws and regulations are applied? Do governments cooperate across regions to copy or unify their laws? With regard to possible interventions and strategies, are different approaches called for in autocratic as opposed to democratic settings? Transitioning countries or those facing internal conflicts?

These are some of the questions and issues to be explored and debated as philanthropy infrastructure leaders come together to advance their understanding and produce a document outlining key elements of an enabling environment that will be relevant worldwide. This WINGS workshop will provide an opportunity to reflect, discuss, debate and plan a way forward. The expectation is that the discussions stemming from this workshop will result in a call to action or advocacy statement to be used by WINGS members in their support for the philanthropic sector.

²¹ Carothers, T. Brechenmacher, S., “In for a Dumpy Ride: International Aid and the Closing Space for Domestic NGOs” 11 March 2014