

**Contributions to Transparency and Accountability:  
Tax Havens and Beneficial Ownership  
From OSF Unit Proposed Strategies 2014 - 2017**

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## ADVOCACY AND OPERATIONAL OFFICES

### OSF-DC

#### IV. Concepts and Initiatives

From: International Issues

Transparency – OSF-DC will continue to work with others for full US implementation of Cardin-Lugar and to secure USG support to make it a global norm. George has raised this and other transparency issues with Secretary Kerry and others and we remain deeply involved in helping move them forward at the G8/G20 summit. **We are also helping to launch a campaign to pass US legislation preventing the use of shell corporations for money laundering and mandating disclosure of beneficial ownership which we hope will also become the basis for a global norm.** We have a high degree of expertise in this area and prior legislative success to build on.

From: Addendum: Preliminary OSF-DC 2014 Work Plan  
International Issues:

Transparency and Anti-Corruption – Defend the Cardin-Lugar standard in the US and work to promote it as an international standard; **develop a campaign to increase the transparency of shell corporations.**

### OSEPI

From: 4. OSEPI'S OWN CONCEPTS AND INITIATIVES

#### **III. Promote global standards for transparent governance and accountability of both public and private sectors**

*Opportunity:* Accountability and governance have shot up the political agenda in Europe owing to public spending cuts and revelations of banking malpractice, **illicit financial flows and tax evasion.** The euro crisis has opened a major opportunity to advance European and international standards over the next four years. Public anger about misuse of public funds and lack of accountability of the financial sector is driving renewed political will to change the system and a faster legislative timetable. We will use this momentum.

*Specific objectives:*

Corporate governance:

- The EU implements by 2017 legislation on transparency and accountability ranging from country-by-country disclosure of payments to governments beyond the extractives sector, to **strong rules against anonymous shell companies (through the Anti-Money Laundering Directive) and tax justice.**
- The 2004 EU policy on protection against land-grabbing is critically reviewed and updated.
- The EU develops strong legislation on human rights due diligence by corporations.
- The EU develops a robust compliance mechanism for its human rights guidelines on energy (oil and gas) and information and communications technology.
- EU policy-making:

- EU institutions meet the Open Government Partnership membership criteria and improve transparency in policy-making through tighter rules on lobbying.
- OGP membership increases through EU support and more countries joining.

International standards:

- The EU exports its standards of inclusive policy development, transparency and accountability through the G8 and G20, and through its special status at the UN.

*Insight and capacity:* The strong coalitions, expertise and access to policy-makers we have built over the past decade enable us to push for faster progress towards binding commitments. **The addition of the new Money and the Public Interest Program will give more focus to this work within OSF, increasing the clarity of our partners' goals and strategies at EU level.**

#### 5. SHARED FRAMEWORKS

OSEPI will contribute to shared frameworks (SFs) where EU policy, funding, laws or public stances can significantly affect the outcome. OSEPI's contribution to developing and implementing SFs will depend on how large the EU component is and how much content the SF will produce that would influence policy. Some of the objectives listed above will evolve as SFs advance: for example, the 'data for equality' own concept could become part of a justice SF; **the possible SF on corporate accountability is likely to have a significant EU component**; and OSEPI is engaged on the working group on standards and methods for elections. OSEPI expects to shape significantly the EU dimension of the 'Jekhutno' shared framework on Roma.

### **GEOGRAPHIC PROGRAMS AND FOUNDATIONS**

#### **OSA**

##### 5. Contribution to Shared Frameworks

The shared frameworks (either formally proposed or which are likely to be proposed) which would appeal most to OSA, given our challenges, are:

**Tax havens/financial transparency.** Effective citizen engagement in monitoring extractive industries and government revenue management. We hope OSF will build globally on its successes with Revenue Watch, EITI and other initiatives which have given dedicated citizens the means to understand revenue management, and further develop the tools which allow ordinary citizens to creatively engage in protest and lobbying for changes.

## ARO

### III. From: Fealty to Fields and Places

#### **Transparency and Public Accountability**

Corruption, nepotism, and state exploitation of resources are some of the evident consequences of the **absence of transparency and public accountability** and effective legal mechanisms that protect people's interests. Cultivating a culture of accountability requires both that citizens demand and exercise their rights to know, to be informed, and to seek redress, and that officials are accountable irrespective of their position. To foster this cultural shift, ARO will pursue two avenues that together build greater transparency and accountability and the active engagement of citizens in achieving and protecting both.

2. ***Transparency and Accountability of Corporations.*** ARO will engage with international and local organizations to develop programming in this area, starting with consumer protection to foster public awareness and engagement in efforts to secure corporate responsibility. The Center for Economic and Social Rights in Egypt has a record of legal advocacy targeting corporations involved in corruption and would be a key partner for ARO. *ARO aims to achieve greater accountability of corporations and businesses starting from a consumer protection angle in parallel to fostering debates around corporate practices, public accountability, and countering corruption.*

*Within four years, the ARO will have made a substantial contribution to strengthening civil society's know-how and capacity to inform democratic transitions, by fostering effective civil society interventions to introduce and enforce checks and balances in governing frameworks integral to the consolidation of the rule of law, democratic accountability, and protection of human rights.*

## CEP

### From: **FIELDS, CONCEPTS, AND COLLABORATIONS**

We group fields and concepts together under three broad priorities for clarity. However, we understand and appreciate the distinction between the two types of work, and have responded to template sections 3 and 4 respectively for each field and concept. Collaborations are also discussed by priority. We do not envision CEP's participation in the currently nominated shared framework proposals; however torture, migration, and **corporate accountability** all have potential that we will explore with the relevant OSF actors.

### From: ***Field 3 – Transparency and Accountability***

#### ***Concept 3a – Focus on the Families***

We propose assembling a coalition dedicated to fighting high-level corruption throughout Central Asia, starting with the ruling Karimov family of Uzbekistan. Three parallel, mutually reinforcing tactics will be pursued:

- 1) *Investigations*: Inspired in part by successes in France to target the ill-gotten gains (“biens mal acquis” or BMA) of African dictators, we will sponsor legal action to target the foreign possessions of Central Asia’s elites. We believe that the ostentatious consumption patterns of the Karimovs offer a nearly ideal test case for the application of BMA to Central Asian cases. The main NGO involved in the African suits has expressed interest in this. We expect prosecutions to make it more difficult for kleptocrats to shelter wealth abroad and easier for new regimes to recover pilfered state assets.
- 2) *Asset recovery/repatriation*: As part of a larger transitional justice agenda, CEP will pursue the repatriation of the illicit assets back to the people from whom they were stolen, promoting the idea of a charitable fund to spend frozen assets under conditions of transparency and international accountability. A useful precedent is the Bota Foundation, a fund set up after a Kazakh corruption scandal to redistribute seized assets.
- 3) *Outreach to investors*: Finally, foreign investors who find themselves being seduced by corrupt elites in closed societies into shadowy deals will be pressured by the advocacy coalition either to stick to the OECD Guidelines of corporate due conduct or abandon the markets of Uzbekistan and Turkmenistan. Those who do not comply may be publicly targeted.

In Turkmenistan, where the ruling elites are not less corrupt than in Uzbekistan, CEP will continue research to identify advocacy targets and pressure points. Here the main leverage is in opposing the involvement of international lenders like the EBRD and World Bank in development projects.

CEP’s successful experience in assembling an innovative multi-stakeholder campaign around cotton positions it well to lead in this sphere with a mix of grants, convening, and advocacy. For now, this concept will focus on Turkmenistan and especially Uzbekistan, but we will be on the lookout for similar opportunities in Azerbaijan, Kazakhstan, and elsewhere.

There is a risk that any of the main targets – the ruling regimes, countries where elites’ ill-gotten assets have been revealed, and foreign investors – may refuse to cooperate for various reasons. Yet there is always the option of appealing to public opinion and thereby exerting pressure upon the uncooperative. The advocacy coalition will assert its legitimacy by rooting its demands in the OECD Convention on Combating Bribery of Foreign Public Officials and other similar international legal mechanisms supported by key G8 members.

#### Outcomes and Assessment:

- By 2016, a CEP-led group of international and regional NGOs and experts is operating and focused on exposing elite assets abroad and regimes’ corrupt deals with foreign investors. The coalition will have published well-documented cases that shame individual actors and call attention to corrupt practices.
- By 2017, the campaign has identified major international investors in Central Asia and used public and private tactics to discourage them from abetting corruption. At least two large investors have been reached out to via the OECD complaint mechanism, building on recent successful action against cotton traders.

- By 2015 the coalition will have started promoting the idea of a charitable fund to spend frozen assets for the benefit of Uzbekistan's populace. By 2016, some or all of the bank assets currently frozen in Sweden will have been allocated to this fund and an international board of trustees created to govern it. By 2017 we hope the government of Switzerland, where additional assets are frozen, follows suit.

### ***Significant Collaborations within this Priority***

Each of the region's national foundations has a focus on transparency and accountability. In the absence of a network program leader, CEP has often been their collaborator of choice, initially on natural resource issues and now on electricity. **Going forward, we will work closely with Julie McCarthy and OSEPI since their ideas on beneficial ownership and ending secrecy jurisdictions intersect with our Focus on the Families initiative.** RWI remains an important contact point. On electricity, key collaborators have been the local partner groups in Kyrgyzstan, Tajikistan, Mongolia and Pakistan, as well as the secretariat of the Electricity Governance Initiative at the World Resources Institute and Prayas Energy Group in Pune, India. On grand corruption, we expect to collaborate with Sherpa, Global Witness and the International Consortium of Investigative Journalists.

### **SFK**

From: 3. FEALTY TO FIELDS AND PLACES

### **FIELD: TRANSPARENCY AND ACCOUNTABILITY**

**Whereas some important international transparency initiatives (such as on beneficiary ownership) are too sensitive to be pursued directly by SFK as a national foundation, we will rely upon OSF Central Eurasia Project to take the lead.** In such cases our role will be to provide indirect support from behind the scenes (e.g. by helping CEP to reach out to local experts or, vice versa, by making findings known locally).

### **RPI**

From: 5. Contributions to Shared Frameworks

RPI may also contribute to a potential shared framework on tax havens. Corruption is endemic in Afghanistan and Pakistan, in collaboration with OSA and FOSIP transparency work.

## **U.S. Programs**

### C3. Shared Frameworks

U.S. Programs sees great value in working more effectively with colleagues from other thematic and geographic programs to pursue shared goals, address common hurdles, or to confront challenges not contained within the increasingly porous borders within which USP works. We are currently discussing the development of several Shared Frameworks, including but not limited to the following:

**Corporate secrecy:** Given U.S. Programs' work on transparency and on the role of private interests, we are jointly exploring the idea of a potential shared framework around a campaign to end tax havens by 2017, or an alternate, narrower framework on the globalization of U.S. mandatory extractive revenue policy.

## THEMATIC PROGRAMS

### JI

#### 3. and 4. Proposed Strategic Priorities 2014-2017

##### A. Rule of Law and Human Rights – Cross-Cutting Initiatives

This cross-cutting cluster is intended to pursue initiatives that promote the rule of law and human rights generally, rather than through any individual theme or cluster.

##### ii. Program Concepts and Initiatives

The Justice Initiative's international experience as litigator and advocate, reinforced by OSF's global footprint, makes it well-situated to identify common challenges to, and opportunities to promote, the rule of law that cut across our thematic priorities, as well as different systems and regions. Our access to a network that includes practitioners, advocates and decision makers enables us to combine grassroots strategies with policy level approaches.

**Goal:** Identify and operationalize a productive means of deploying the unique combination of Justice Initiative tools to address egregious examples of economic injustice.

Over the coming six months, we will develop a possible initiative around issues of economic inclusion which incorporates one or more elements of equality, **transparency, accountability, and/or anti-corruption**. For now, the cross-cutting nature of this project situates it within the rule of law grouping. Possibilities currently under exploration include: through the lens of consumer protection, to challenge as unlawfully unfair or complicated the terms of contracts between large financial institutions and individual consumers/customers; **through the lens of transparency, to expose and end the secrecy with which financial or corporate institutions hide lawfully gotten proceeds/profits from tax authorities, or to enhance meaningful public oversight of large financial institutions; through the lens of anti-corruption, to expose and end the secrecy with which financial or corporate institutions hide illegally gotten gains from government authorities;** and through the lens of equality, to address the economic harm accruing to

racial or ethnic minorities as a result of discrimination in access to social services, education, health care, or other social/economic rights as to which equal access (as opposed to entitlement to the right as such) is legally enforceable.

2014 Objective: Identify, design a plan for executing, and begin implementation of, at least one concrete means of addressing issues of economic justice through law in a particular country or region.

Proposed OSF Partners: OSIFE, OSEPI, HRI, AFRO, OSIEA, OSIWA
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### A. Accountability, Liberty, and Transparency

Recent events across a range of fields have underscored the extent to which liberty and transparency are both essential and threatened values of open society – from (i) the determination of governments to hide rights abuses and crimes committed in the name of the war on terror, to **(ii) the growing public intolerance of bank, corporate, and government financial secrecy as a source of corruption, poor governance, and economic inequality**, to (iii) the role of information transmission in speeding an end to authoritarian regimes across the Arab world.

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**Regarding grand corruption, there has been increasing recognition among the populations of developing countries, as well as donors, that systematic grand corruption undermines development, subverts the rule of law and respect for human rights, corrodes trust, and often paves the way for resource-fueled conflict. But more dramatic shifts appear underway. Tolerance for bank secrecy has plummeted with increased economic hardship in Europe and elsewhere. Systematic tax evasion combined with bribery, nepotism, self-dealing and abuse of legal structures are increasingly recognized as common grievances underlying the crisis in both developed and developing societies. And more public statements and reporting reflect an understanding that the same offshore networks and financial machinations serve corporate bribers and government kleptocrats, fabulously wealthy corporate and individual tax evaders, and organized crime. We propose to link our case work more effectively with grassroots efforts to strengthen communities victimized by grand corruption. By identifying and working with other actors already pursuing legal accountability, we will embed our core work of persuading and pressuring law enforcement to prosecute such criminality in locally rooted advocacy for legal and policy changes that make it harder to hide the details of corrupt deals and protect stolen assets.**

#### i. Faalty to Fields and Places

**Goal: Engage and inform civil society actors and reformist officials seeking to challenge grand corruption, tighten anti-money laundering laws and regulations, and crack down on abuses of offshore financial vehicles through updates on case developments, information sharing, and specialized trainings on issues such as pillage and corporate beneficial ownership.**

#### 2014 Objectives:

- Support civil society and reformist official efforts to develop grand corruption cases through publication of *Legal Remedies II* and provide information sharing and strategic

support via specialized trainings (pillage, corporate ownership); assistance in using legal empowerment techniques to articulate demands for accountability; and engaging with “Doers” and/or other prosecutors’ networks.

- **Support civil society efforts to tighten anti-money laundering laws and regulations, and to crack down on abuse of offshore vehicles, including efforts to improve legislation and to press for more aggressive enforcement, by offering our litigations as detailed illustrative case studies of the problems with current norms and the improvements needed, particularly regarding the need for transparency of actual beneficial ownership of offshore vehicles.**

Proposed OSF Partners: MPI, OSIPE, OSI-DC, AfRO, Information Program, HRI

Proposed External Partners: APDHE, Association Sherpa, CIVITAS, TRIAL, Déclaration de Berne, Oxford/Cambridge Faculties of Law, Corruption Watch UK, EG Justice, Associação Mãos Livres, International Centre for Asset Recovery, Offshore Investigations, Organized Crime and Corruption Reporting Project, and Anticorruption Action Centre

## 5. Contributions to Shared Frameworks

**Corporate Ownership:** A shared framework proposal on corporate beneficial ownership transparency, secrecy jurisdictions, and tax avoidance currently under development draws upon our investigative case work, a training we organized with the (former) OSF Human Rights and Governance Grants Program and a series of discussions we have held with partners in Africa. We are considering various ways to contribute, including: (i) demonstrating through our cases how shell corporations and offshore rules pose obstacles to accountability for grand corruption; (ii) documenting examples/lessons from litigation; and (iii) sounding out the possible interest of the “Doers” (anti-corruption prosecutors) network in engaging in this effort.

## MPI

### 4-Concepts and Initiatives

#### **Curtailing Illicit Financial Flows and Promoting a Fair International Tax System**

Curtailing illicit financial flows and creating more a just and equitable multinational tax system is critical to improving the efficiency and accountability of public resources in developing countries. Illicit flows (the proceeds from money laundering, corruption and tax evasion) deprive developing countries of an estimated one trillion dollars per year—nearly ten times the amount of official development assistance flowing into these economies. This massive capital flight from south to north is facilitated by a sophisticated offshore financial system skewed in favor of large corporations—one that is highly secretive and often legally impossible to penetrate. Until recently, OECD countries unanimously agreed that tax havens and anonymous shell companies were beneficial to the global economy, while international donors and activists remained narrowly focused on less politically charged sources of development finance such as foreign aid and debt relief.

For a variety of economic and political reasons, this consensus has rapidly begun to shift amongst political leaders in the US, UK and Europe. A desire to maximize revenue during the global financial crisis, a spate of OECD country corporate tax evasion scandals (e.g. Google, Starbucks, Apple, Amazon) and record-breaking profits (approximately \$32 trillion) being held offshore have all led developed countries to take a keen interest in cracking down on tax havens and anonymous shell corporations. The UK has made progress on tax and transparency a centerpiece of their 2013 G8 chairmanship, and the Obama Administration is working with Congress to reintroduce long-stalled legislation on beneficial ownership before a key ally, Senator Carl Levin, retires in 2014. The ongoing EU revision of its anti-money laundering directive, new draft EU legislation on automatic exchange of tax and banking information and country efforts to harmonize domestic legislation with Financial Action Task Force (FATF) recommendations offer additional opportunities to make regulatory progress. Eminent voices from the south have also joined the global call to action, with leaders like Ngozi Okonjo-Iweala and Kofi Annan calling on G20 leaders to establish common rules around beneficial ownership and multinational tax evasion. Finally, there is a nascent civil society movement around financial secrecy and offshore tax haven abuse—represented by groups like Tax Justice Network-Africa and Global Financial Integrity—that has accumulated impressive policy expertise and is building alliances with mainstream development organizations.

Despite the transformed political climate, many powerful obstacles and risks remain.<sup>1</sup> Multinational corporations continue to out-lobby and out-spend civil society activists to keep tax loopholes in place. Countries, territories and states that play a critical role in illicit finance—such as Switzerland, the British Virgin Islands and Delaware—are also powerful opponents with economies built around the very opacity and loopholes that any serious reform effort would eliminate. Unilateral efforts by certain OECD countries could have splintering effects on collective reforms and lead to major loopholes. Certain key bodies such as the International Accounting Standards Board (IASB) remain unwilling to consider revising rules that appear custom-made for hiding transfer pricing. The sheer complexity of the issues at stake pose real challenges for civil society, lawmakers and policymakers alike, and can easily deter new constituencies from becoming engaged with the issues. Finally, the growing aura of inevitability around beneficial ownership reforms means that by the time we achieve our regulatory goals, the majority of tax evading corporations, kleptocrats and drug lords may have already identified new mechanisms for hiding their stolen wealth. Nonetheless, curtailing illicit flows by even 10 percent would effectively double the resources available for development finance, and make life measurably more difficult for corruption’s perpetrators.

**MPI’s objectives and vision of success for this initiative are the following:**

1. Achieving regulation in key OECD jurisdictions that mandates public disclosure of beneficial ownership information for corporations, foundations and trusts;

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<sup>1</sup> Revelations from a high profile investigation into offshore secrecy in mid-2013 have caused dozens of public officials—including the President of France, European Finance Ministers and Russia’s Deputy Prime Minister—to issue formal statements demanding action on illicit flows, and resulted in numerous governments (e.g. U.S., UK, Australia, France, Greece and the Philippines) launching investigations into secret offshore accounts.

2. Achieving new listings requirements and/or international accounting standards that require country-by-country reporting of tax payments for all multinational companies;
3. Achieving automatic exchange of banking and tax information amongst OECD countries and between OECD and developing countries.
4. Promoting new models of corporate taxation in key OECD countries that rely on real factors such as sales, payroll and assets to apportion multinational tax obligations;
5. Identifying cost-effective ways to strengthen the tax monitoring and enforcement capacity of developing countries, with an emphasis on transfer mispricing;
6. Raising the costs of tax secrecy by using newly disclosed information to investigate, name and shame the companies, financial institutions, lawyers, accountants and individuals that facilitate illicit flows
7. Building broad-based political will to tackle the problem of illicit capital flight in developing and developed countries, and obstructing legislation/regulation that would create new tax havens in countries (e.g. Kenya, Ghana)
8. Increasing and diversifying donor support for work on illicit flows and tax justice issues

MPI will use these objectives as direct measures of its success over 2014-2017, collecting information from its grantees, internal OSF partners and on its own to benchmark incremental progress as it goes.

To achieve its objectives over 2014-2017, MPI will use a combination of grant making (large, medium and small grants), direct advocacy, technical assistance and possibly strategic litigation.

- **MPI will use grantmaking as the primary tool to advance its objectives around illicit flows and tax justice**, with a focus on international, regional and local organizations that undertake direct policy advocacy to influence laws and regulations in OECD countries, developing countries and relevant international and regional institutions (e.g. International Accounting Standards Board, Financial Action Task Force, African Union). **Example grantees include** leading international organizations such as Global Financial Integrity (GFI), the Tax Justice Network (TJN), CGD-Europe and Eurodad; advocacy coalitions such as the US-based Financial Accountability and Corporate Transparency (FACT) campaign; the International Center on Investigative Journalism (ICIJ) for expose around offshore financial secrecy; and fledgling civil society efforts in countries most affected by illicit flows and tax justice concerns, such as the Nairobi-based Tax Justice Network-Africa and the East African Tax and Governance Network.
- MPI will also work to **create a broader global social mobilization campaign to end tax havens**, with a focus on broadening the southern constituency for reform. An example grantee would be The Rules, a new social justice start-up (started by the founders of Avaaz and Getup, equivalent of Moveon.org), which is working closely with the Tax Justice Network and other global civil society stakeholder to apply their strategic campaigning and political organizing experience to illicit flows and tax justice.
- MPI will work closely with OSF-DC, OSIPE, AfRO and the Information Program to **undertake direct advocacy around regulatory reforms, particularly in the US and EU**. This includes not only pursuing a specific set of policy reforms around issues such as beneficial ownership and tax transparency, but also ensuring that new anti-money laundering regulations (e.g. FATF)

do not inadvertently harm civil society.<sup>2</sup>

- MPI will work with the Information Program to **explore tools and strategies for supporting civil society and media to effectively use new data around beneficial ownership and tax payments** for domestic, regional and international advocacy. This could include working with technology experts to help civil society build databases that link politically exposed people in their countries to conflicts of interest and illegal activity based on information drawn from public beneficial ownership registries.
- MPI will **work with regional and local foundations to build awareness and engagement around international efforts on illicit flows and tax justice**. This includes identifying specific areas where anonymous shell companies, money laundering and tax evasion are of primary concern and developing regionally grounded research and advocacy projects that serve local objectives. Examples might include investigative research and litigation around the mass siphoning of US foreign assistance to Afghanistan to tax havens such as Dubai and the UK, or the use of anonymous shell corporations by dictators like Islam Karimov and his family to illegally launder looted state assets.
- MPI will explore work with current partners such as ISLP, as well as with nascent efforts like “Tax Inspectors Without Borders” and other potential service providers **to scale up independent technical assistance to developing countries around tax collection and enforcement**.

MPI will work with the Transparency and Accountability Donor Collaborative to **engage new donors in the illicit flows/tax justice field**. The Norwegian Government and now OSF are the primary players, and initial conversations with Ford and Hewlett suggest potential interest.

## 5-Contributions to Shared Frameworks

MPI is exploring the idea of a potential shared framework around a **campaign to end tax havens by 2017**. MPI is also exploring a potential contribution to the Africa Food Security and Climate Change shared framework around the governance of foreign land investment contracts and its implications for rural agriculture and environmental sustainability. We are having conversations with the four African foundations, the Human Rights Initiative and the Justice Initiative about a collective effort to (1) improve governments’ capacity to negotiate equitable land deals that promote development and protect local communities, food security and the environment and; (2) empower affected citizens to resist/improve harmful land deals through legal remedies, access to information tools and collective organizing.

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<sup>2</sup> For example, we have seen countries like Turkey and Kyrgyzstan use the Financial Action Task Force (FATF) recommendations around money laundering to tighten government control over NGO registration.