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INDIANA UNIVERSITY
Lilly Family School of Philanthropy

The Global Philanthropy Environment Index South Africa

Expert: Ricardo Wyngaard

Institutional Affiliation: Ricardo Wyngaard Attorneys

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Company Limited by Guarantee, Trust

Five main social issues addressed by these organizations: Arts and Culture, Basic Needs, Early Childhood Education through High School, Human Rights, Religion

Average time established by law to register a philanthropic organization: 61-90 days

Average cost for registering a philanthropic organization: USD 25

The South African legal system, in essence, has a choice between one of three legal structures, namely: a voluntary association, a nonprofit trust, and a nonprofit company. A voluntary association, which is the most popular option, can be set up without any costs involved. The cost of registration for nonprofit trusts is about USD 17. The nonprofit company can be set up for about USD 30.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government

Philanthropic Environment Scores:

Year	Ease of Operating a PO	Tax Incentives	Cross-Border Philanthropic Flows	Political Environment	Economic Environment	Socio-Cultural Environment	Overall Score
2022 GPEI	4.33	4.00	2.75	4.00	2.00	4.00	3.51
2018 GPEI	4.00	4.00	3.00	4.00	N.A.	4.00	3.80

Source: Indiana University Lilly Family School of Philanthropy, 2022 *Global Philanthropy Environment Index*

Key Findings

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three indicator questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration: (B) operations: and (C) dissolution.

Question One: To what extent can individuals form and incorporate the organizations defined?

Score: 4.0

South Africa has adopted and abides by the major treaties that protect the freedom of association, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, and the right is also enshrined in Clause 18 of the country's constitution.

Practically, there are three forms of legal entities for nonprofit organizations operating in South Africa—namely voluntary associations, nonprofit trusts, and nonprofit companies. Of these entities, voluntary associations are the most popular because their establishment is quick, inexpensive, and easy. A voluntary association is established in terms of common law and basically entails the finalization of the organization's constitution by its members. The South African courts have accepted the following three requirements for recognition as a *universitas personarum*: the association exists separate from the members who comprise it; the association must have perpetual succession; and the constitution must provide that it may own property apart from its members. This form of association does not have to register in order to be recognized as a legal person (Council on Foundations, 2020).

One of the practical shortfalls with the voluntary association is that you are likely to experience difficulties when opening a bank account for a voluntary association because of anti-money-laundering legislation, especially if it is not registered with the Nonprofit Organisations Act. The voluntary association will also find it difficult to register as a taxpayer and consequently apply for tax benefits if it is not registered in terms of the Nonprofit Organisations Act. The time to register a nonprofit trust depends on the local office where registration takes place, and ranges from two weeks to two months. Significant registration delays have during the reporting period been experienced at three of the largest offices in South Africa, namely, Cape Town, Johannesburg and Pretoria. The Masters' offices have not yet been introduced.

Question Two: To what extent are POs free to operate without excessive government interference?

Score: 4.0

POs are generally allowed to decide on their internal governance structures, and government actors only rarely interfere with the internal governance structures of nonprofit organizations. The requirements that are legally imposed upon POs are usually aimed at ensuring that the organization is an authentic nonprofit organization that is not used for private gain and that the activities of the organization are lawful. The Nonprofit Organisations Act, for example, lays down a number of requirements that must be adhered to in order for a nonprofit organization to be registered and

comply with the terms of the Nonprofit Organisations Act. The founding document of a PO registered under the Nonprofit Organisations Act must provide, inter alia, that the organization's incomes and assets are not distributable to its members or officers, that these individuals have no claims to these incomes or properties, the organization's structure and governance protocols, procedures for dissolution, and procedures for distributing assets in cases of dissolution. POs registered under the Nonprofit Organizations Act must annually submit prescribed narrative reports and financial reports certified by an accounting officer. The Nonprofit Organisations Act does not require registered POs to submit audited financial statements. The Minister of Social Development, Ms. Lindiwe Zulu, has on November 3, 2020, launched the Know Your NPO Status Campaign, which outlined "the process of deregistration of non-compliant NPOs." The Department of Social Development (the Department) stated that: "As of September 2020, 233,180 NPOs were registered with the Department and only 30 percent of the registered NPOs were compliant." Similar registration and reporting requirements are applicable to tax-exempt organizations and are provided for in South Africa's Income Tax Act. Tax-exempt organizations must annually submit prescribed tax returns. The Income Tax Act does not generally require such compliance for other organizations.

Question Three: To what extent is there government discretion in shutting down POs?

Score: 5.0

In terms of the common law, the Trust Property Control Act, and the Companies Act, the governing body of an organization is allowed to voluntarily dissolve the PO, and South African law does not generally allow the government much discretion in shutting down the activities of an organization. The South African Courts have confirmed that the members of a voluntary association are banded together by a contract based on a consensus and are bound only by the terms to which they have agreed. Given the nature of voluntary associations, i.e., contractual in nature, the governing body must comply with the provisions of the constitution upon dissolution. In the event that a government department intends to close down an organization, it would be required to first approach a court of law to obtain an order for that purpose. Involuntary termination is usually only provided for in circumstances where an organization may be insolvent and would then become subject to the statutes contained in the Insolvency Act. POs registered under the Nonprofit Organizations Act must, upon dissolution, transfer assets to another nonprofit organization with similar objectives. The other nonprofit organization need not be registered under the Nonprofit Organisations Act. POs may, in certain instances, also be de-registered when there has been non-compliance with relevant legislation. For example, the Nonprofit Organisations Act empowers the director of nonprofit organizations to cancel the registration of a PO that has not complied with a material provision of its constitution; a condition or term of any benefit or allowance conferred on it in terms of the Nonprofit Organisations Act; or its reporting requirements as contained in the Nonprofit Organisations Act. Before cancelling the registration status of a PO, the director must first issue a compliance notice to the PO.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question Four: To what extent is the tax system favorable to making charitable donations?

Score: 4.0

South African POs are able to receive contributions that are donor deductible. Only approved public benefit organizations (PBOs) whose status complies with the terms of section 18A of the Income Tax Act, however, can issue receipts to their donors for donations received, either in cash or in-kind, which will allow the donors to make deductions from their taxable income—up to 10 percent of their taxable income for both individuals and corporations.

Section 18A of the Income Tax Act allows taxpayers to take a deduction from their taxable income when they make donations to certain organizations. The process to receive these deductible donations is clearly articulated in section 18A of the Income Tax Act, which stipulates that a donation will only qualify for a deduction if: the donation is made to an approved PBO, the PBO receiving the donation uses the funds to carry out public benefit activities, the donation is not made in payment for services rendered to the taxpayer, the donation is not made in the form of a service, and the donation does not exceed 10 percent of the taxpayer's taxable income. Not all PBOs, however, can receive tax-deductible donations. Some organizations, for example, focusing on activities such as the advancement, promotion, or preservation of the arts, culture, or customs and the provision of youth leadership or development programs, do not qualify for donor deductible status. Donations in-kind are also eligible for deduction, but donations in the form of a service are not eligible for deduction. The list of PBOs that can access tax deductible donations has increased over the years, but a few POs are not eligible for tax deductible donations, including those focusing on religion, arts, and sports.

Question Five: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

Nonprofit organizations can access several tax benefits provided for in the terms of the Income Tax Act. This Act—along with various other rulings and statutes—confers upon eligible South African POs a number of advantages. First, they ensure that South African POs are fully exempt from paying income tax if they engage in limited trading activities. This also means that POs are partially exempt from paying income tax in situations where their trading income exceeds the limitations contained in Section 10(1)(cN) of the Income Tax Act. Second, POs are able to receive donor deductible contributions. Only approved public benefit organizations (PBOs) whose status complies with the terms of section 18A of the Income Tax Act can issue receipts to their donors for donations received—either in cash or in-kind, which will allow the donors to make deductions from their taxable income—up to 10 percent for both individuals and corporations. Third, South African CSOs are able to access other tax benefits that are reliant on the PO's PBO status. These include exemptions from transfer duties, estate duties, capital gains taxes, donation taxes, skills development levies, and dividend taxes. Also, South African law allows organizations to apply for rebates on property rate

taxes, which are usually accessed at the local government level. To access these main tax benefits, most POs must be approved PBOs. Applications to be approved as a PBO are submitted to the Tax Exemption Unit of the South African Revenue Service. Application is made by completing a prescribed form and providing supporting information on the activities of the PO. The official process time is 52 business days. PBOs must carry on one or more public benefit activities as defined in the Income Tax Act and must submit annual income tax returns to qualify. Only in exceptional instances are PBOs required to submit audited financial statements.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question Six: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 2.5

South Africa's tax laws are not restrictive for PBOs operating outside the borders of South Africa. The Income Tax Act used to require PBOs to conduct at least 85 percent of their public benefit activities—whether calculated by time or money—within the borders of South Africa. This requirement was, however, abandoned in 2006, and PBOs are now generally free to conduct their activities outside the country's borders. Nonetheless, a PBO can only receive deductible donations for public benefit activities being carried out in South Africa. Even though the tax laws have seemingly been relaxed, South Africa still enforces prohibitory exchange controls, and all residents are subject to exchange control requirements. And, although the controls have generally been relaxed in recent years, they nonetheless still stipulate that applications by official or recognized charitable, religious, or educational bodies seeking to transfer funds to groups in countries outside the Common Monetary Area—Namibia, Lesotho, South Africa and Eswatini—must be submitted to the Financial Surveillance Department with full particulars of the underlying request for approval. Organizations are not, however, required to obtain government consent in order to receive offshore donations or to channel such donations via a government department.

Question Seven: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 3.0

South Africa's Customs and Excise Act of 1964 makes a provision for the general rebate of custom duties on imported goods for nonprofit organizations. This rebate is made in accordance with the terms and definitions provided in Schedule No. 4 of the Act which consists of six parts, and it provides a refund—partial or full—of customs duties on certain specified imported goods, subject to various conditions. Parts 1 to 4 are largely relevant to POs and include the following:

- a) "Goods for the advancement of journalism directed toward cultural, educational, charitable, welfare or youth organizations or purposes receive a full rebate. The institutions or bodies must

be approved, and their main purpose must be the advancement of journalism and the goods must have been forwarded unsolicited and free.”

- b) “Also, goods for disabled persons or the upliftment of indigent persons—such as goods designed for persons with physical or cognitive disabilities—are eligible for a full rebate, provided that the recipient can produce a certificate from a specified organization, such as the South African National Council for the Blind, the South African National Council for the Deaf, or the South African National Council for Mental Health. These certificates must, in turn, be endorsed by the International Trade Administration Commission (ITAC) and applicants must demonstrate that the imported goods are for the exclusive use of persons with disabilities.”
- c) “Goods (excluding clothing) donated to welfare organizations receive a full rebate, provided the goods are forwarded unsolicited and distributed free of charge by the welfare organization, or used by such an organization, and a specific permit from the ITAC is required. Ineligible goods are subject to normal customs duties, which are ordinarily calculated between 5-20 percent of the value thereof.”

IV. Political Environment

The four indicator questions in the next three sections concern the political context, economic conditions, and socio-cultural characteristics that influence the environment for philanthropy.

Question Eight: To what extent is the political environment favorable for philanthropy?

Score: 4.0

The political environment in South Africa can generally be considered as favorable for philanthropic freedom in South Africa. The South African government has generally been supportive of the PO sector. South Africa’s National Development Plan provides on page 337 that: “In social welfare services, the State has adopted a partnership model of service provision and relies mainly on nongovernmental welfare organisations to provide professional social services. However, the funding of these organisations has declined steadily since 1994, reducing the range and compromising the quality of services at the same time as demand for such services has increased.” President Cyril Ramaphosa, in his maiden 2018 State of the Nation Address (the SONA) on February 16, 2018, recognized the critical role of nonprofit organizations (NPOs) in “tackling poverty, inequality and related social problems.” He convened a social sector summit, to “seek to improve the interface between the state and civil society.” Although provincial summits took place in preparation of the national summit, the national social sector summit did not take place due to the COVID-19 pandemic.

Question Nine: To what extent are public policies and practices favorable for philanthropy?

Score: 4.0

The South African government generally promotes philanthropic values and facilitates equal access to national and international resources and opportunities. Donors are generally free to support any philanthropic cause without government pressure. Government agencies demonstrate enough capacity to support and oversee POs. South Africa’s legislation and policies pertaining to nonprofit organizations generally provide a supportive environment for philanthropic giving. To this extent, since 1994 the South African government has introduced various legislative measures aimed at

promoting philanthropy to the PO sector, including: The Nonprofit Organisations Act, the amendments to the Income Tax Act during 2001, the introduction of the National Lotteries Act of 1997, the National Development Agency Act of 1998, and the Revised Broad-Based Black Economic Empowerment Codes. POs are perceived as an integral part of South African society, and given the high levels of poverty in South Africa, POs have played a significant role in rendering much needed services to marginalized communities. In addition to rendering services, POs are also playing an important role in advocating for policy changes to support South African society. During its repressive past, the nonprofit sector—which has historically consisted mostly of small community-based organizations—played a significant role in bringing about democracy and ending Apartheid in South Africa. Regrettably, the resources to support the effective implementation of such laws have been lacking.

V. Economic Environment

Question Ten: To what extent is the economic context favorable for philanthropy?

Score: 2.0

Statistics South Africa (Stats SA) reported during 2015 that the unemployment rate was at 27.2 percent. In recognition of this, the National Development Plan recognized that “to eliminate poverty and reduce inequality, the economy must grow faster and in ways that benefit all South Africans.” During 2021, the Stats SA estimates the unemployment rate to be at 32.4 percent. Stats SA’s quarterly employment statistics (QES), dated September 2020, reveals a decrease in employees in several industries, including mining, manufacturing, construction, and wholesale and trade. The COVID-9 pandemic, escalating unemployment rate, and drastic uncertainty resulted in an unprecedented significant economic challenge. The South African economy is expected to take considerable time to recover. Despite numerous laws aimed at combating corruption, it is evident that corruption is widespread in South Africa. The former president of South Africa has, upon instruction of the office of the former Public Protector, appointed the Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the Public Sector including Organs of State. The Commission has heard several testimonies of orchestrated and spectacular plundering of state resources.

VI. Socio-Cultural Environment

Question Eleven: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.0

National research in South Africa has described South Africa as a ‘Nation of Givers’ and has concluded that the overwhelming majority of those who participated in the study—over 90 percent—gave time, money, and in-kind donations. Although South Africa does not rank highly in the most recent edition of the World Giving Index, philanthropic activity is growing. In its report titled “South Africa Giving 2019: An overview of charitable giving in South Africa,” the Charities Aid Foundation states that: “In 2018, people in South Africa continue to give at the same rate seen in 2017. Eight in ten (80%) have given money in the past 12 months, either to an NPO/charity, to a church or religious organisation, or by sponsoring someone. The most popular cause to give to is helping the poor (55%

of donors).” South Africa has long benefited from a rich charitable culture, one that has given rise to a vibrant civil society and nonprofit sector. South Africans have generally aspired to the spirit of Ubuntu (a Nguni word meaning “correct behavior” within a social group). The principle embraces the duty to care for others and can be roughly translated as “I am what I am because of who we all are.” The spirit of Ubuntu has been present in South African communities and has laid the platform for philanthropic activity on both individual and organizational levels. CSOs are perceived as an integral part of South African society, and given the high levels of poverty in South Africa, CSOs have played a significant role in rendering much-needed services to marginalized communities. In addition to rendering services, CSOs are also playing an important role in advocating for policy changes to support South African society. During its repressive past, the nonprofit sector—which has historically consisted mostly of small community-based organizations—played a significant role in bringing about democracy and ending Apartheid in South Africa.

VII. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

The South African philanthropic sector consists of two significant sectors, namely: the smaller community-based organizations and the larger non-governmental organizations. The former are commonly poorly resourced but are widespread throughout South Africa and often cater to the basic social needs of communities in South Africa. The latter are more diverse in their focus areas, often professionalized with increased institutional capacity, but less likely to be based in rural areas. A number of larger organizations provide support and funding to smaller organizations, but most smaller organizations do not have access to such practical support. South Africa has not, despite several interventions, been in a position to effectively deal with the challenges of the smaller community-based organizations. Although legislation has expressed a commitment and desire to support and enhance the capacity of smaller community-based organizations, this has not been successfully implemented. Any legislative and policy developments must, therefore, take into account the realities of smaller organizations.

Three major recent events affecting the philanthropic landscape between January 2018 and December 2020

1. A state of national disaster was declared in South Africa during March 2021. This has significantly impacted the operations and fundraising of South African NPOs. The COVID-19 pandemic represents the single most devastating impact on nonprofit organizations in South Africa.
2. The South African government declared a national state of disaster on February 13, 2018 as a result of the drought experienced in three of South Africa’s provinces. The drought has at that stage negatively affected social services. Many donors and nonprofit organizations had to re-prioritize their activities to alleviate the negative impact of the drought on many communities.
3. To alleviate the impact of the COVID-19 pandemic, South African legislation made provision donations to the newly established South African Solidarity Fund (the Fund), which is an approved PBO, to receive donor deductible contributions. The Fund has been established to provide relief focused on the impact of COVID-19. Donations to the Fund qualify during a limited period for a deduction under section 18A—a maximum of 20 percent of the taxpayer’s taxable

income. Some have suggested that the establishment of the Fund has resulted in the diversion of donor funds from other charitable organizations. The Fund has made grant allocations to charitable organizations.

Future development trends in the philanthropic landscape

The COVID-19 pandemic had a devastating impact on the South African nonprofit sector and sparked the need for emergency funding for many organizations that are faced with an increased demand for essential services but saw a reduction in funding support. Research in South Africa is scant on the emergence of new forms of philanthropy. Crowdfunding has steadily increased in South Africa since about 2015.

Three key recommendations to improve the environment for philanthropy

- The focus on improved governance has gained significant momentum in the South African landscape. However, it is important that smaller nonprofit organizations be provided with sufficient support and resources to suitably boost their compliance and governance systems. Nonprofit organizations, especially smaller ones, should receive increased support to improve their governance systems and policies.
- The Income Tax Act should be amended to allow for a simplified registration process (similar to that of the Directorate) for smaller organizations with an annual turnover of less than the current prescribed amount. This could include the signing of a simplified written undertaking confirming that the organization will comply with the additional requirements if the income exceeds the prescribed amount.
- Increase collaboration should be explored between nonprofit organizations, the state and the private sector. The private sector has introduced new governance systems and policies and can play a significant role in supporting organizations to improve their governance systems. The hosting of the Social Sector Summit, as announced by the South African President during 2018 and initially scheduled for March 2020, would hopefully contribute positively to this form of collaboration, once it takes place.

VIII. Philanthropic Response to COVID-19

These questions are used to provide a general picture of the philanthropic response to the COVID-19 pandemic in this country and recommendations for improving cross-sectoral collaboration.

Areas where the nonprofit sector and philanthropy are playing a role in responding to COVID-19

Non-profit organizations and philanthropy ordinarily play a significant role in a wide variety of sectors. Many impoverished communities have reached a breaking point during COVID-19, as the rate of unemployment increased during this period. As indicated, during February 2021 the Stats SA estimated the unemployment rate to be at 32.4 percent. The expanded unemployment rate is higher. As a result, many nonprofit organizations have provided disaster relief efforts in an attempt to offer relief to the plight of communities decimated by COVID-19. Unfortunately, no definitive research is available on this.

Innovation and new trends in the nonprofit sector and philanthropy related to COVID-19 responses

Organizations have reportedly embraced new ways of implementing their activities. Organizations have increasingly used online platforms to engage with their beneficiaries, convene meetings, and engage with their stakeholders. Some organizations have embraced digital technology to service their beneficiaries—for example, online training courses and workshops, distant tutoring.

Impact of COVID-19 on the philanthropic environment

Disaster relief and food security efforts were prioritized during 2020. As a result of lockdown regulations, online fundraising efforts have seemingly increased during the pandemic.

Anticipated impact of COVID-19 on the philanthropic environment in 2021

It is anticipated that philanthropy will for the foreseeable future increase focus on alleviating the negative impacts of the pandemic. There will likely be an increased focus on food security, health, education, and skills development. Philanthropy will likely explore and support innovative ways to enable organizations to continue to render their services within a different context through digital platforms, where possible.

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