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Lilly Family School of Philanthropy

The 2022 Global Philanthropy Environment Index Kenya

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QUICK FACTS

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

Five main social issues addressed by these organizations: Early Childhood through High School, Environment, Food, Health and Medical Research, Human Rights

Average time established by law to register a philanthropic organization: 0-30 days

Average cost for registering a philanthropic organization: USD 300

On average it takes about 3 months to have a philanthropic organization (PO) registered in Kenya though rules and regulations put it at 30 days. The delays are occasioned by bureaucracies within the registration system. The cost for registration varies depending on whether a national or international organization is registered, with the latter costing more. POs should be aware of the possibility of serious vetting sessions by the country's intelligence agency, and more so if one intends to operate in the areas deemed sensitive such as human rights, and security among others.

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	4.00	3.00	4.00	3.50	3.50	3.00	3.50
2018 GPEI	3.83	3.50	2.00	2.00	N.A.	3.00	2.87

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: 3.0

The situation in Kenya has remained the same over the period in regard to the registration of POs in the country. A 2019 report recently published by the NGO Coordination Board indicates that the Board registered 98 new NGOs of which 77 were national and 21 international. By end of 2019, the Board had registered a total of 11,262 NGOs in Kenya to pursue various charitable purposes. Even though reported cases of outright and open refusal for registration of certain organizations have declined in recent years, this has not been as a result of any change in law or policy. Government is yet to operationalize a new law known as The Public Benefits Organization Act that was passed by Parliament in 2013 despite several court orders. Under the current law, government officials still retain the powers to refuse registration on account of unexplained national security threats, terrorism or illicit financial flows. There are new and enhanced laws such as the Prevention of Terrorism Act, Data Protection Act of 2019, Proceeds of Crime and Anti-Money Laundering Act that one way or another affect POs and have been cited in efforts to curtail the work of POs.

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

Score: 5.0

There is very minimal interference by the government on the structure of governance for philanthropic organizations in Kenya. Other than providing a generic structure that is required at the registration stage of the organization, there are no known cases of organizations being harassed by government officials based on their governance structures. There are no legal restrictions on the communication channels that POs use to communicate either internally or externally. However, there are laws that govern general communications among the populations, including using social media meant to protect personal spaces. They apply across the board—from individuals to organizations. An example of such a law is the Computer Misuse and Cybercrimes Act that was enacted in 2018 but contested, and was eventually declared constitutional in 2020 by the Court and is currently in operation. Sections of this law have been used to silence government critics that include both individuals and organizations.

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

Score: 4.0

The registration law in Kenya requires POs to provide a dissolution clause in their constitutions and bylaws. Generally, there is no interference with organizations going through the dissolution process. This process is inconsistent, however, as we have seen cases where organizations suspected to be at variance with the government—especially those suspected of terrorism acts and political interference such as human rights organizations—banned and deregistered at the whims of government bureaucrats. A few of those cases end up in a court of law and some have had the decision reversed. There have been some positive reports over the last three years, after the 2017 elections, with the Annual CSO report by the regulator finding that no organization had been deregistered in 2019. It is highly likely that the same situation prevailed in 2020.

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: 3.0

The law in Kenya allows charitable organizations access to tax benefits to support their work. The Income Tax (Charitable Donations) Regulations 2007 and the Income Tax Act (ITA) provide the tax legal framework for charitable POs in Kenya. Paragraph 10 of the First Schedule to the Income Tax Act provides that the income of an institution, body of persons, or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education, all for public benefit, shall be tax-exempt. Such an entity must either be established in Kenya, or its regional headquarters must be situated in Kenya. However, where that income consists of gains or profits from a business (this could be trade, service delivery, consultancy, etc.), the gains or profits from the business shall not be exempt from tax unless those gains or profits are applied solely to the charitable purposes.

There are very clear regulations that guide how organizations can proceed to apply for these benefits. There are no stipulated restrictions on how much one can raise as long as both the donor and recipient conduct their affairs within the law. However, the process of obtaining the tax exemptions can be long and onerous, resulting in many organizations abandoning it midway. It is as if the process is designed to wear out applicants. There are reported cases of thousands of applications being made and only a handful being awarded. This has led many organizations to not bother with the application process.

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

Score: 3.0

While there are tax incentives available in Kenya to both individuals and corporations that donate money to charitable organizations, the process under which such incentives are given is onerous. There are clear laws and regulations that guide the process of accessing tax exemptions, but very few organizations get to enjoy this benefit, as the sole responsibility for issuing the exemptions is vested in the Cabinet Secretary for Finance. As such, it appears that only those with direct access to the Minister get to benefit from this decision. On the other hand, government officials unofficially cite the need to protect the process from abuse and not provide leeway to tax cheats. There are studies that have shown little awareness among the POs on available tax incentives. A study carried out by the Kenya Community Foundation in 2014 found that almost all the respondents interviewed did not have accurate information, knowledge or understanding of the tax laws governing the philanthropy space in Kenya. This is a result of lack of a clear understanding of the tax framework within which the organizations operate.

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: 4.0

Generally, the law does not prohibit the sending and receiving of charitable donations across borders as long as the banking regulations that seek to curtail illicit flows are adhered to—for example, the money laundering, anti-terrorism, and fraud prevention laws. Restriction is higher in neighboring countries earmarked as terrorism hot spots like Somalia. It should, however, be noted that communities living along the borders not only share similar cultures but also relations that enable individual philanthropic giving across the borders. Such giving is less regulated and are powered by local mobile money transfers. Despite this, there have been cases where the provisions within the banking/finance laws have occasionally been used to disrupt the movement of philanthropic resources across the borders on allegations of such funding being used to fund terrorist activities. A good example of the complexity of cross-border financial movement came to the fore during a terrorism court case where police prosecutors filed documents in court showing that one of the suspects linked to a terrorist attack had transacted at least KES 100 million (USD 1 million) via mobile money within a few months before the attack. Another suspect received over USD 90,000 via mobile from South Africa months before the terror attack and channeled it to terror suspects through 47 mobile phone SIM cards.

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

Score: 4.0

The legal framework in Kenya is somewhat robust and favorable for receiving or sending foreign donations. Save for a very few occasions, hardly any organizations complain of being inhibited from these operations. Diaspora remittances, for instance, have grown in Kenya over the years with recent reports indicating remittance inflows jumped by nearly 11 percent in 2020 to USD 3.09 billion. “In Kenya, remittance inflows were strongly buoyant in 2020, despite the devastation by COVID-19 (Coronavirus) in the source countries,” the Central Bank of Kenya said in a statement. The report further states that the remarkable growth of remittances has been supported by financial innovations that provided Kenyans in the diaspora more convenient channels such as mobile phone platforms for their transactions.

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: 3.5

In the recent past, there has been improved recognition by the government on the work that POs do and the role that they play in the socio-economic sphere on the country. The government of Kenya is more open and receptive to engaging and working with POs toward finding lasting solutions to a number of social problems. This can partly be attributed to the requirements by the 2010 Kenya Constitution that requires public participation in governance decisions. Courts have been very consistent in delegitimizing government laws that fail to demonstrate public participation, forcing government bureaucrats to engage with members of the public through POs and other community groups. A good example of ongoing collaboration between government and POs is the engagement around creating a framework to monitor the achievements of United Nations’ Sustainable Development Goals (SDGs) in Kenya. Although disjointed, there has been a growing establishment of national- and country-level frameworks for guiding government multi-stakeholder collaborations. Another good example is the government multi-stakeholder collaboration on the national action plan on countering violent extremism in Kenya. These efforts have been decentralized to all counties across the country and bring together government, POs, communities, private sector, international organizations, and religious organizations to pursue a system-based approach to reduce the vulnerabilities of young people to join extremist groups—one of the biggest security challenges in the country. The same can be seen in other areas such as agriculture, youth and women’s affairs, and sports and culture.

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

Score: 3.5

The public policy scheme around philanthropy is still a work in progress. Government is yet to fully understand the role of philanthropy, and so to some extent still pushes donors to support its development priority projects. There is sometimes a feeling that the government is competing for the scarcely available donor resources with POs. An example cited is the creation of the COVID-19 relief fund that saw government raise billions of Kenyan Shillings to provide relief for victims of the COVID-19 pandemic.

V. Economic Environment

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

Score: 3.5

Kenya experienced a moderately stable economic environment compared to other countries on the African continent. The economic growth over the last five years has averaged 5.5 percent and Kenya has been listed among the top five economies in Africa. However, corruption is endemic and many efforts are being expended to fight the vice. Corruption continues to affect many spheres of life in Kenya and the philanthropy sector is no exception. Donors have consistently expressed their displeasure at the mismanagement and misuse of donor funding and, on some occasions, projects have been discontinued on account of reported corrupt acts. The trust gap has widened due to the mismanagement of resources and lack of a friendly accountability framework for monitoring and reporting international and local donations. This has prompted legislators to draft a Public Fundraising Appeals Bill of 2019 that seeks to curtail the misuse of public fundraising, especially by politicians. The proposed law is contentious, as some see it as meant to curtail the vibrant philanthropy spirit among Kenyans. Despite all these issues, the vibrancy of the philanthropy sector continues to draw more supporters for philanthropy in Kenya.

VI. Socio-Cultural Environment

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

Score: 3.0

Philanthropy is generally accepted in Kenya and ranks high among the populations. Communities are known to come together during happy and sad times to pool resources to support each other. The political leadership has in many cases been built around the philanthropic giving of individuals. However, due to many cases of corruption, the population remains skeptical about POs. The largest forms of philanthropy remain person-to-person giving and faith-based giving, which unfortunately remain largely disjointed and undocumented. Most of the philanthropic contributions in Kenya are directed to education and health (primarily medical bills). The growth of institutional philanthropy has stagnated recently after a decade of rapid growth attributed to coordinated efforts by philanthropy support organizations, such as the East Africa Philanthropy Network, to grow institutional philanthropy locally. The adoption of technology has powered innovations that have aided growth of

individual philanthropy through online and mobile money donations. Crowdfunding platforms such as M-Changa and social media platforms such as WhatsApp are the new frontiers used to power individual and community philanthropy in Kenya.

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

Kenya's philanthropy is largely informal and non-traditional. The practice of philanthropy is underpinned by the rallying call "Harambee," which means pulling together. It is only in recent years that we are seeing efforts being made to build formal philanthropic institutions and to attempt to formalize giving. With the growth of philanthropic institutions, we have also witnessed a growing number of emerging philanthropic support institutions at country and regional levels. Institutions such as the East Africa Philanthropy Network and Kenya Community Foundation are playing a critical role in nurturing efforts to institutionalize giving in Kenya. Further, there is an emergence of a drive toward accountability and self-regulation mechanisms among the civil society groups championed by organizations such as the CSO Reference Group and Viwango.

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

1. COVID-19 Emergency Response Fund
2. Drafting of the Public Fundraising Appeals Bill, 2019
3. Emergence of social media, especially WhatsApp, as a fundraising mobilization tool

Future development trends in the philanthropic landscape

The COVID-19 pandemic has laid bare major development trends that we are going to witness in the philanthropic trends in the country. First, the government has more than ever before acknowledged the place of POs in the socio-economic development of the nation, and we foresee deepening interest and involvement by government agencies in seeking to institutionalize philanthropic organizations. This may lead to providing a much more favorable tax environment for POs. Online and mobile giving are going to be entrenched with the increased development of e-giving and crowdfunding platforms such as M-Changa. The COVID-19 crisis has brought to light the centrality of blended finance as a vehicle to unlock philanthropic resources much needed to solve development processes.

Three key recommendations to improve the environment for philanthropy

- The government of Kenya needs to implement the much more robust Public Benefits Organisations Act 2012 that was enacted into law in 2015. The PBO Act, apart from providing an institutional framework to govern the operations of PBOs, strengthens accountability mechanisms and regulation that help to bridge the currently existing trust gap between POs and communities.

- There is a need to establish a central data management system for philanthropy that captures and tracks data for better coordination and decision making.
- There is a need to intensify philanthropy education and awareness among key stakeholders from community members to policymakers to grow professionals. This can be achieved by decentralizing philanthropy infrastructure processes to reach lower levels of society and having more recognition of the contributions of philanthropy through data, storytelling and impact assessment.

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

- Provision of medical and healthcare support;
- Financial support projects to small businesses;
- Relief support to families and communities;
- Funding of innovation—mobile tech, handwashing; and
- Public sensitization programs on COVID-19 measures.

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

- Increased virtual support and remote work by POs;
- Government coordination through a basket fund for COVID-19—intensified effort by government to mainstream pandemic relief;
- Tax benefits for mobile money transfer through waivers that enable tax-free person-to-person giving; and
- Direct cash transfer and adaption mechanisms, especially in poor settlement areas or slums.

Impact of COVID-19 on the philanthropic environment

COVID-19 has strengthened philanthropy in ways never seen before. There was increased cross-border giving from locals to relatives in the diaspora community. There was more coordination and collaboration among donors to leverage resources and reach the most needy and vulnerable members of society. Many donors allowed for redirection of funding toward pandemic-related relief support. There has also been reported reduced funding from business/corporate and family foundations due to dwindling resources. And finally, unfortunately, a number of POs may never live to see the post-pandemic era, as they collapsed in the midst of the pandemic.

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

There will be reduced funding as new priority areas emerge. There is likely to be less funding for pandemic relief as focus shifts toward developing health policies. Unfortunately, more organizations are going to shut down as a result of the effects of the prolonged pandemic.

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