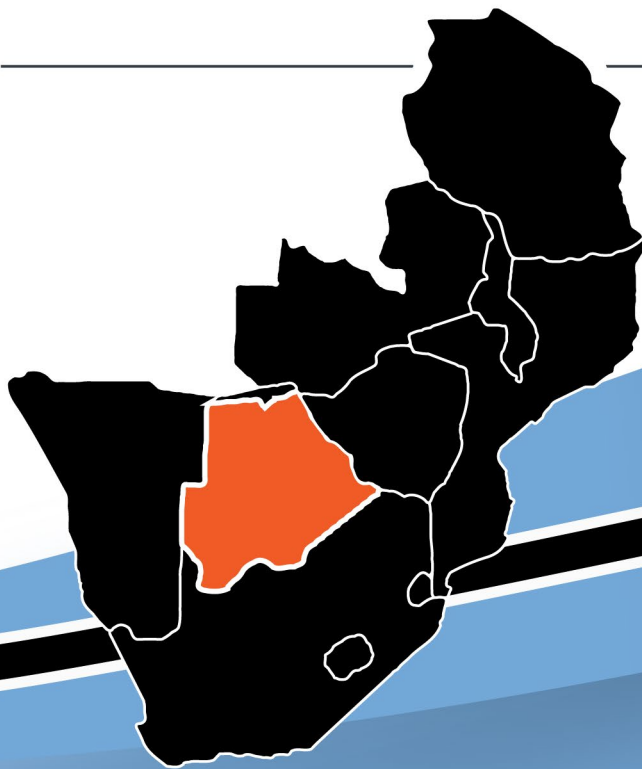


Understanding the Legal Framework for Philanthropy in Southern Africa



Botswana Report

Mokaloba Mokaloba
University of Botswana

January 2023



WINGS

ACKNOWLEDGEMENTS

SIVIO Institute extends its gratitude to Mokaloba for conducting this study. We are also grateful to the philanthropy organisations in Botswana that took part in the survey. The outcome of the study was made possible because of their willingness to share their experiences and perceptions on their operating context.

This study was made possible through funding provided by WINGS and the European Union.



Co-funded by
the European Union





EXECUTIVE SUMMARY

Philanthropy has been in existence for a long time in the African society and what modern forms do is to enhance that which was already in place. This report seeks to assess the ease of doing philanthropy work in Botswana as part of a wider research on Southern African philanthropy, the aim being to help guide policy makers and all stakeholders to find ways to create a more conducive environment to do philanthropy work.

The research incorporated both a qualitative approach, through desktop research on existing legal frameworks affecting philanthropy, and a quantitative approach through an online survey to gather perceptions of the operating environment of philanthropy practicing organisations registered in Botswana.

Philanthropy organisations in Botswana are regulated by the Registrar of Societies as the rest of the Not for Profit Organisations (NPO). Of the sixteen organisations surveyed, most of which have been in operation for more than five years, the registration process has been described as being very demanding with more than half indicating that to gather the documents required is not easy. The respondents generally felt that the cost of registering an organisation was very cheap but takes about three to six months depending on type of organisation. It was also noted that online means of registration was not popular as more than 80% indicated they didn't know it even existed while those who used it indicated that it was very inefficient.

In order to ensure that organisations registered as philanthropic entities are doing work



that they are mandated to do, they are required to renew their operational licences periodically with about 70% indicating they do so annually. This is to curb any fraud and money laundering by organisations that may not be getting into this space to help the needy but to hide their illegal activities.

There are laws that exempt philanthropic organisations from paying taxes unless the money received comes from business or disposal gains as found during the desktop research and as backed by the responding organisations. Although most respondents highlighted that there are laws that govern the taxation regime in Botswana, most of them could not tell how many those laws were. Although there are favourable exemption laws in place, there are no incentives in place for those individuals and organisations that support philanthropic work in cash and in kind except for political recognition like merit awards that government officials give from time to time.

Movement of money internally and externally has been made a little more difficult as the country responded to a grey listing by the Financial Action Task Force by thoroughly investigating sources of funds. This means that the process of moving money for philanthropic work has been made slower than usual but organisations involved still feel that it is a very flexible process since it protects them in the end. Organisations are also happy with the transfer fees, which they feel are fair and the fact that when money is transferred from other countries, they are allowed to retain the grants in the currency of the country of origin. With the bulk of the money coming from donations by well-wishers, these developments come as good news to philanthropic organisations based in Botswana.

From the findings of this report, it is recommended that the government do more to support the work of philanthropy in form of grants to organisations, removal of tax completely and also to provide tax incentives for those organisations and individuals who support charity work. Government should also improve the online registration process so that many organisations can register without the need to travel to an office in person.



Table of Contents

Executive Summary	3
List of Figures	6
1.0 INTRODUCTION	7
1.1 Background of the study	7
1.2 Purpose and objective of the study	8
1.3 Research methodology	8
2.0 LEGISLATIVE ENVIRONMENT – REVIEW OF CURRENT LEGAL FRAMEWORK INFLUENCING PHILANTHROPY IN BOTSWANA	9
2.1 Ease of registration of philanthropic organisations in Botswana	9
2.2 State oversight and compliance to remain registered	10
2.3 Taxation of philanthropic organisations in Botswana	11
2.4 Resource mobilisation and movement of funds	12
2.5 Incentives for promoting the art of giving as part of national development	13
2.6 Support in governance and human rights-based work	13
3.0 KEY FINDINGS FROM THE SURVEY	14
3.1 Types of the organisations surveyed	14
3.2 The registration and compliance procedure	16
3.3 Taxation and incentives for giving	18
3.4 Regulating the movement of money within and outside Botswana	20
3.5 Supporting advocacy-focused work	22
4.0 CONCLUSION	23
5.0 RECOMMENDATIONS	24
REFERENCES	25



List of Figures

Figure 1: Types of organisations	14
Figure 2: Age of the surveyed philanthropic organisations	15
Figure 3: Sources of funding for philanthropic organisations in Botswana	16
Figure 4: Time taken to successfully register a philanthropic organisation	17
Figure 5: Online and physical registration of philanthropic organisations	17
Figure 6: Renewal of licences for philanthropic organisations	18
Figure 7: Tax rates for philanthropic organisations	19
Figure 8: Is there a policy on philanthropy or that encourages giving practices in Botswana?	20
Figure 9: The flexibility of the movement of money across borders	21
Figure 10: Permission to retain grants in the currency of the country of origin	21
Figure 11: Laws that restrict supporting/funding advocacy-focused work	22

Acronyms:

BURS	Botswana Unified Revenue Services
EU	European Union
FATF	Financial Action Task Force
NPO	Not for Profit Organisations
PAYE	Pay-As-You-Earn
USAID	United States Agency for International Development
VAT	Value Added Tax



1.0 INTRODUCTION

1.1 Background of the study

Philanthropy is as old as the human race. For centuries, the art of giving to the less fortunate has been a part of all societies. Because of the evolution of states and governance, organisations that engage in philanthropic activities must be registered and governed by various laws. Botswana as a country has always been guided by the principle of *Botho* which is recognised as one of the pillars of the nation. This principle implies the need to be respectful of each other and at the same time giving a helping hand to each other. Traditional practices such as Mafisa (allowing someone to herd your cattle and use them to plough and milk them for feeding) shows the urge to help each other is enshrined in the culture of Botswana. All these speak to a philanthropic environment that has been developed with local and international philanthropic organisations now operating in the country providing different forms of assistance in religious, charity, conservation and other different areas. This report seeks to measure the ease of doing philanthropic work in Botswana by analysing the different laws and policies that regulate organisations that conduct this type of work. The report also examines a survey of philanthropic organisations in Botswana to determine the challenges they face in registration, compliance, taxation, resource mobilisation, and any other aspect of charitable work. The report at the end will inform an index that will gauge the environment of doing charity work in Botswana against other countries as well as rank the ease of doing this



philanthropic work in these different Southern African countries.

1.2 Purpose and objective of the study

The study seeks to understand and assess the environment of philanthropic organisations in Southern Africa. In the end, the report will serve as a guide to policy makers on how they can improve the environment of philanthropic organisations in their country. The [Ease of Doing Philanthropy Index](#) is a measurement of the philanthropy environment in the Southern African region. The index is an open-access platform and scores countries according to the laws and policies in place that either inhibit or promote philanthropy. This report is specific to Botswana and will allow for a review of the current philanthropic environment in the country and alongside the reports from other countries, the study allows for a comparative analysis between countries of southern Africa. The reports aspire to give an account of the operating environment for philanthropy which the audience may use to see how Botswana is faring. The report also aspires to influence policies that promote the practice of philanthropy stemming from what is currently in place and influence best practices in Botswana and the region at large.

1.3 Research methodology

The study incorporated both qualitative and quantitative research approaches. Qualitative research was done by a thorough desktop research on the laws affecting philanthropy organisations in Botswana. This was done by looking into different government publications, research publications, policy documents, newspapers, books and other forms of secondary data. The study further draws from primary data through a quantitative research approach where 16 philanthropic organisations in Botswana were surveyed through an online survey tool, Survey Monkey. The qualitative data gathered helps guide on what legislative framework the state has in place, while the quantitative gives an understanding of the perceptions of the legal framework and the operating environment, overall.



2.0 LEGISLATIVE ENVIRONMENT – REVIEW OF CURRENT LEGAL FRAMEWORK INFLUENCING PHILANTHROPY IN BOTSWANA

The laws of a country shape and make the different environments that governs the different organisations that operate within the boundaries of that country. Botswana is not an exception. The country has different laws and policies that govern different organisations including philanthropic organisation. This section provides a summary of laws and policies that governs the registration of philanthropic organisations, their compliance and the conditions they must satisfy to remain registered, the tax laws that apply to these organisations and any other laws and policies that directly affect the operations of organisations of this nature in Botswana.

2.1 Ease of registration of philanthropic organisations in Botswana

In accordance with the laws of Botswana, organisations of different types that are operational in the country are supposed to be registered with the guidance of the particular legislation or policies that regulate the sector that they operate in. The registration of all societies and any other entity that is non-profit making in nature



is regulated by the Registrar of Societies. This act was first enacted in 1972 by the parliament of Botswana. Philanthropic organisations such as charity and community based organisations, in their nature, are non-profit making entities and are therefore registered and regulated under this act. The act determines all the requirements for such organisations to be duly registered, determines the fines that accrue from going against any provisions of the legal instruments of Botswana as well as gives conditions that may deem a philanthropy organisation null or qualify it for de-registration.

The nature of philanthropic organisations can be prone to fraud as not all those who register entities of this nature plan to use them for the purposes that they are intended to serve. This, therefore, makes their registration a vital stage and one that should be treated with the utmost importance (RoB, 1972). The registration of Non-Governmental Organisations including those of a philanthropic nature in Botswana follows a number of steps. Firstly, the act prescribes that a society can only be registered if it is wholly organised and operational in Botswana and also has premises of operation in the country. Furthermore, organisations are only registered upon the submission of a constitution as well as a list of the founding members inclusive of their identification particulars. In general, although the process of registering a philanthropic organisation is largely guided by the Registrar of Societies Act, the different conditions attached to their registration cannot be seen as impossible but rather are meant to ensure compliance with the set mandate of such organisations as well as avoiding commitment of fraud under the pretext of philanthropy. Although the laws may be seen as rigid, they ensure that philanthropic organisations are registered primarily for their mandate hence these laws can be considered to be friendly to the registration of philanthropic organisations in Botswana.

2.2 State oversight and compliance to remain registered

The board of the Registrar of Societies as appointed by the minister responsible has powers to de-register an organisation upon its failure to abide by certain provisions of the guiding act. A change of name, constitution, as well as affiliation



or becoming a branch of a politically affiliated institution in Botswana, are some of the conditions that will have a non-governmental organisation including those of a charitable nature struck off the Registrar of Societies' list and therefore any activity they engage in will be deemed illegal. Any changes of names, constitution or the rules and regulations governing any society in Botswana should be communicated in writing to the Registrar of Society within 14 days when such were effected (RoB, 1972). To ensure compliance and that the public is kept informed of the societies or organisations registered in the country, the list of all societies that are compliant is published in the Government Gazette at the end of March of every year and this also includes all societies that have been de-registered in the past twelve months. The Registrar also has powers to require any registered society to furnish them with documents of their certificate of incorporation, a record of their last six (6) meetings as well as their membership at any moment that the Registrar requires. Overall, even after registration, a society that includes philanthropic organisations in Botswana has to go through various checks and balances to ensure that they remain compliant. Failure to abide by these regulations may lead to fines starting from P200.00 with the worst possible punishment being de-registration of the philanthropic organisation. Organisations are also expected to file their annual tax returns in compliance to the tax laws of Botswana if they are to remain registered and operational. Compliance is critical to avoid organisations diverting from their mandate. In Botswana the compliance laws are generally considered fair to both philanthropic organisations and the regulating body.

2.3 Taxation of philanthropic organisations in Botswana

The tax regime of a country is one of the most critical components to observe by the individual as well as institutions and organisations that operate within the boundaries of that particular state. Botswana runs a highly centralized tax system that is manned by the Botswana Unified Revenue Services (BURS). There are a number of acts that the BURS has at its disposal in its duty of tax collection as well as ensuring that all those who are eligible comply with the tax regulations. Some of the laws used by the BURS in its tax duties include the Excise Duty Act, the Customs Duty Act, the Value Added Tax Act, the Income Tax Act, and the Capital Transfer



Act amongst others (BURS, 2022). Philanthropic organisations are regulated by the Income Tax of 1995. In accordance with this act, charitable, religious, educational institutions and Public trusts are exempted from taxation unless if their income accrues from business or from disposal gains (Botswana, Income Tax Act, 2006). This, therefore, means income that accrues from donations, tithes offerings as well as subscriptions of members is not liable to tax.

2.4 Resource mobilisation and movement of funds

The non-profit making nature of philanthropic organisations means they are supposed to establish streams of resources that funds their operations and this has to be done within the confines of the law. In Botswana, there is legislation that regulates resource mobilisation as well as the movement of funds both locally and to or from outside the borders of the country. Firstly, it should be noted that the government of Botswana does not have a fund that targets Non-Governmental Organisations like philanthropic organisations and therefore, they have to mobilize their resource through other means. This means that most organisations of this nature are funded through member subscriptions, donations and offerings both from local, regional and even international sources. However, as noted under the taxation laws of the country, such funds should be declared to the relevant authorities although they are exempted from income tax. Although government has not committed to the provision of resources to Non-Governmental organisations, it has policy guidelines for financial support to such organisations that may be applied from time to time based on a proposal submitted to government ministries and departments for consideration. The absence of this commitment therefore means philanthropic organisations are not guaranteed of consistent financial support except for proposal based funding through different government ministries as per their annual budgets and therefore leaving them to rely on the private sector, the public as well as foreign sources for most of their funding.

The movement of funds in Botswana is regulated by a number of Acts. This applies to individuals, companies and most importantly in this case philanthropic organisations. These laws include the Counter Terrorism Act of 2014 that seeks



to establish the source of all funding to prevent organisations from using funds from terrorist entities (Botswana Anti Terrorism Act, 2014). The recent Financial Intelligence Act (2022) of Botswana was established to guard against money laundering in the country (Republic of Botswana, 2022). This followed a period of grey listing by the Financial Action Task Force (FATF) (Makwape, 2019). The Act now compels all organisations to declare funds movement within and across the border. This ultimately affects monetary gifts to and by philanthropy organisations by slowing down the movement of money as it goes under scrutiny. These, therefore, serve as the guardians of the movement of all funds from within and outside Botswana inclusive of those that are destined for organisations that do philanthropic work.

2.5 Incentives for promoting the art of giving as part of national development

Government through its policies is key to the success or failure of the works of non-governmental organisations. The incentive to give and the support given to human rights organisations is therefore central to the wins and losses of such organisations. In Botswana, however, the government's role in philanthropic organisations is limited largely to regulation and political support. Botswana as a nation is built on a number of key national principles that are driven by the people and the government. One of these principles is that of humility which is regarded as one of the founding principles of the nation (Morapedi, 2018). Through these principles and together with others such as Unity, the nation is encouraged to have a spirit of giving and supporting each other. However, the government only goes this far as there are no policies that reward for those who give, except for political recognition such as merit awards by ministries and the head of state on special occasions.

2.6 Support in governance and human rights-based work

The government on a regular basis support human rights-based work through contributions in case of emergencies or dire cases. However, similar to the case of encouraging giving, there is no direct or indirect government policy that regulates or stipulates the government's position on such.



3.0 KEY FINDINGS FROM THE SURVEY

This study targeted at least 15 responses from organisations that are already in practice. The survey link was sent to 28 organisations and 16 philanthropic organisations in Botswana responded to the survey.

3.1 Types of the organisations surveyed

A total of 16 organisations that are either, charity, community foundations or corporate foundations were surveyed in Botswana. Charity organisations represented half of the survey responses while community foundations represented 43% with the rest represented by corporate foundations (Figure 1). The responses were filled in by different personnel in these organisations including the founders, Executive directors, program managers and other employees in these different philanthropic organisations.

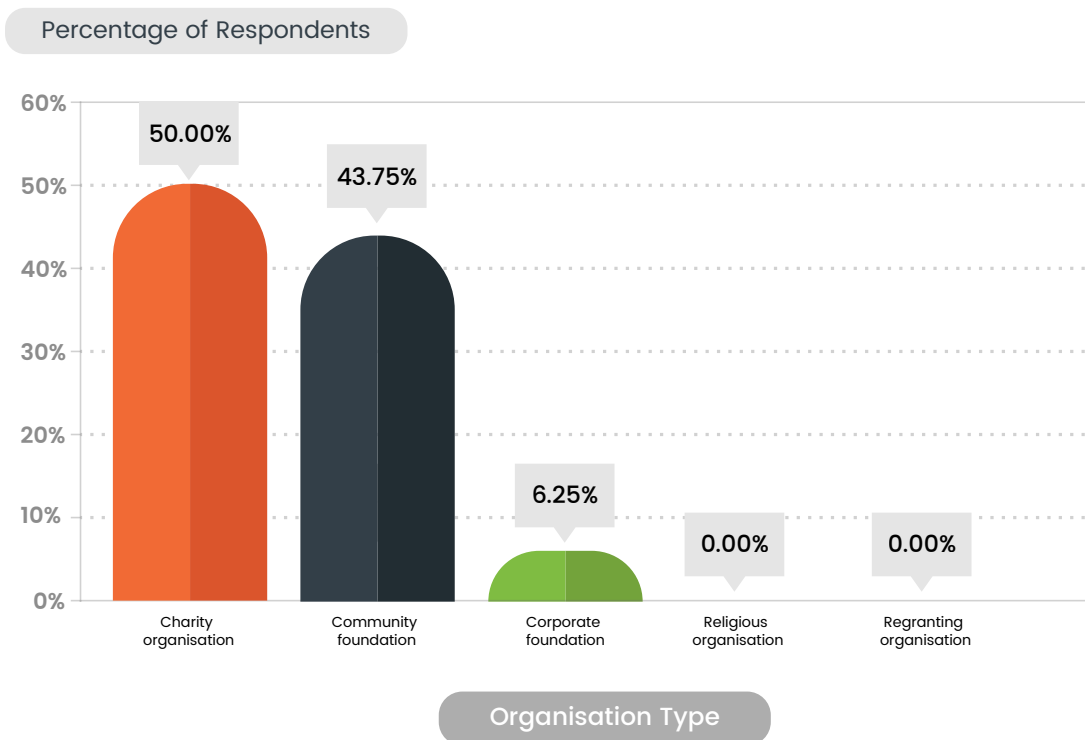


Figure 1: Types of organisations



In attempting to measure the period of existence of most philanthropic organisations, the survey shows that organisations of this nature are not new to Botswana as most of the organisations that responded had been formed more than 5 years ago and a good number were 10 years old or more (Figure 2). This indicates that philanthropic work in Botswana is not a new development and has been around for a while.

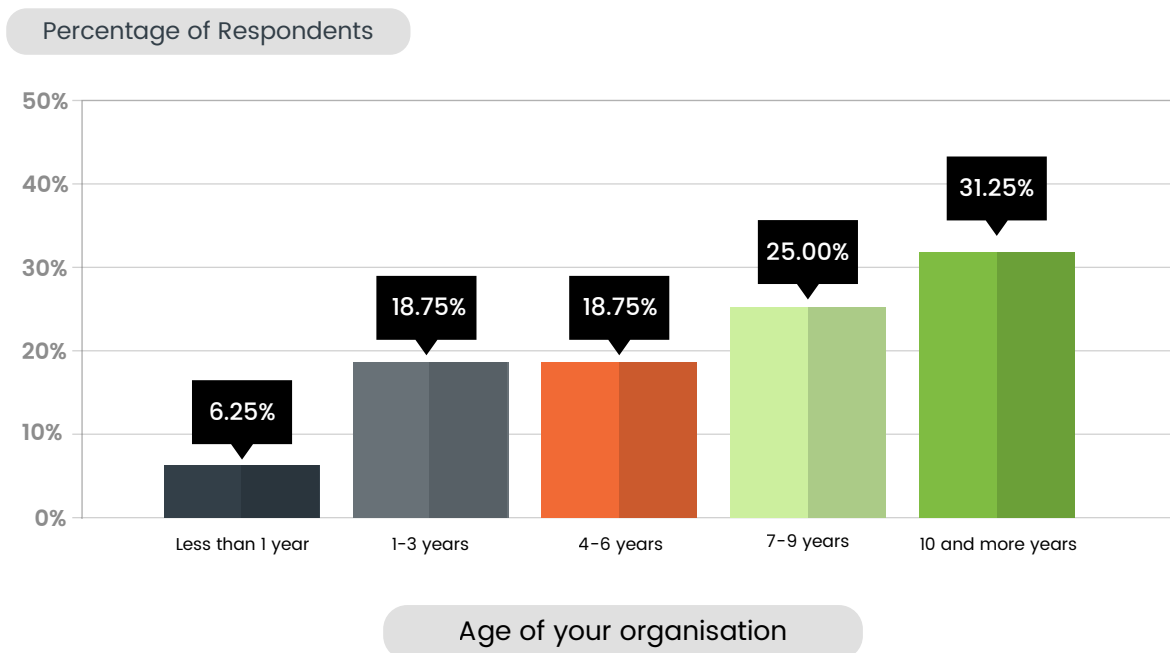


Figure 2: Age of the surveyed philanthropic organisations

Sources of funding

The absence of a reliable stream of funding and resources from the government to philanthropic organisations in Botswana means that the bulk of their funding comes from the international community as well as the private sector. The survey results shows that the bulk of the funding comes from donations by well-wishers both locally and internationally (75%) with proceeds from corporate social responsibility by companies operating in Botswana (63%) as well as membership subscriptions (44%) coming second and third in the funding of the surveyed organisations respectively (Figure 3). The international community represented by organs such as USAID and the EU also appear as funders of philanthropic organisations in Botswana. International renowned donors either as individuals or as foundations are also regulars in the funding of philanthropic drives in Botswana.

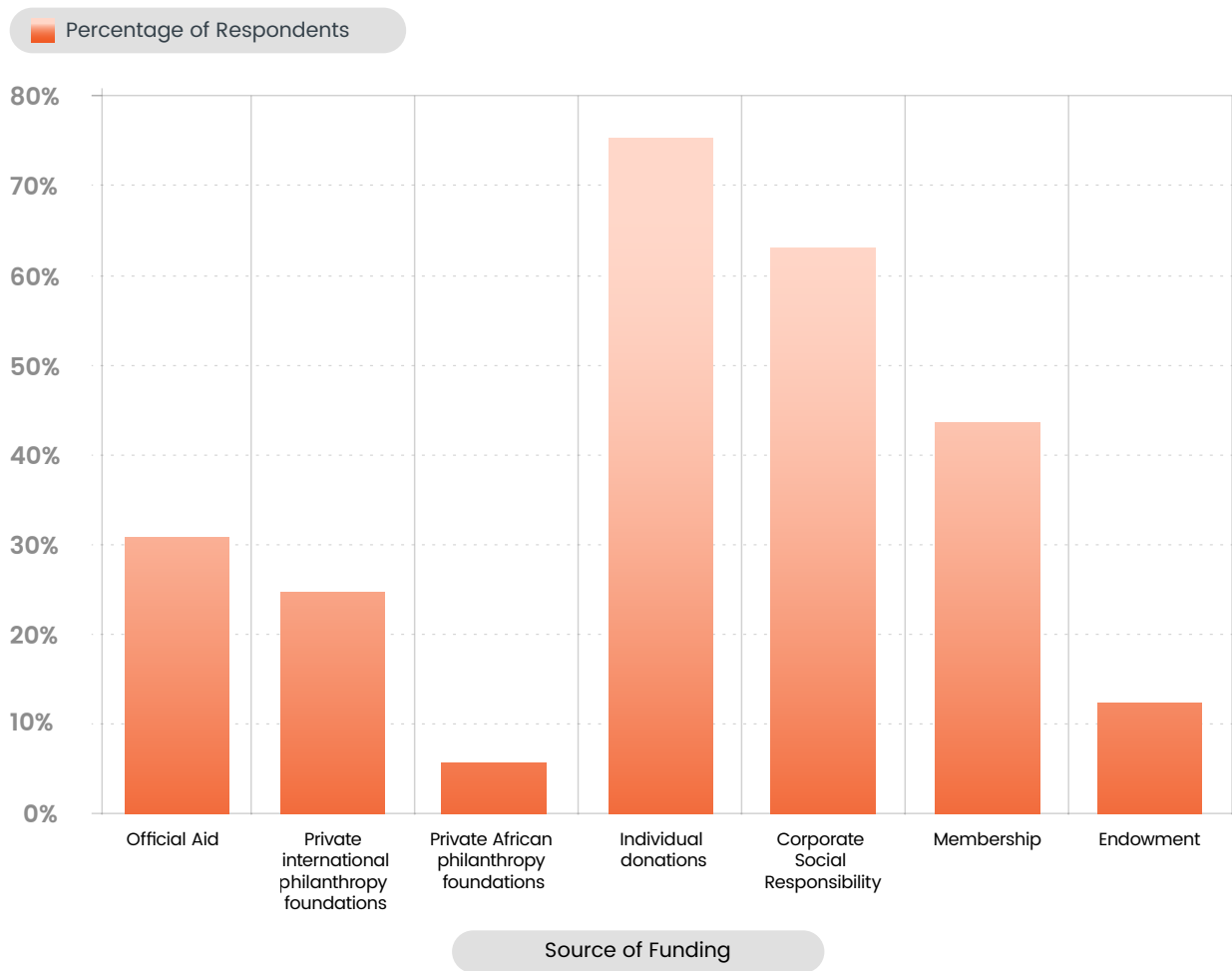


Figure 3: Sources of funding for philanthropic organisations in Botswana

3.2 The registration and compliance procedure

The work of philanthropic organisations is regulated by different legislation from their registration to legal operations. The ease of registration and compliance, therefore, becomes a factor as it will determine the hurdles that these organisations go through from inception.

The survey shows that with regards to registration, on average, about 5 documents are required in order to register an organisation. These may include a constitution, members list and other documentation. In response to the ease of producing these documents, over 50% of the respondents indicate that it is very difficult to produce all these documents pointing to the challenge of registering an organisation of this nature in Botswana. Only slightly above 10% say it's easy to compile these documents and none indicated that it's very easy to produce the documents. On the time required to register a philanthropic organisation, most respondents (53%) point



out that it takes a period of between 3-6 months to fully register an organisation that does philanthropic work in Botswana (Figure 4).

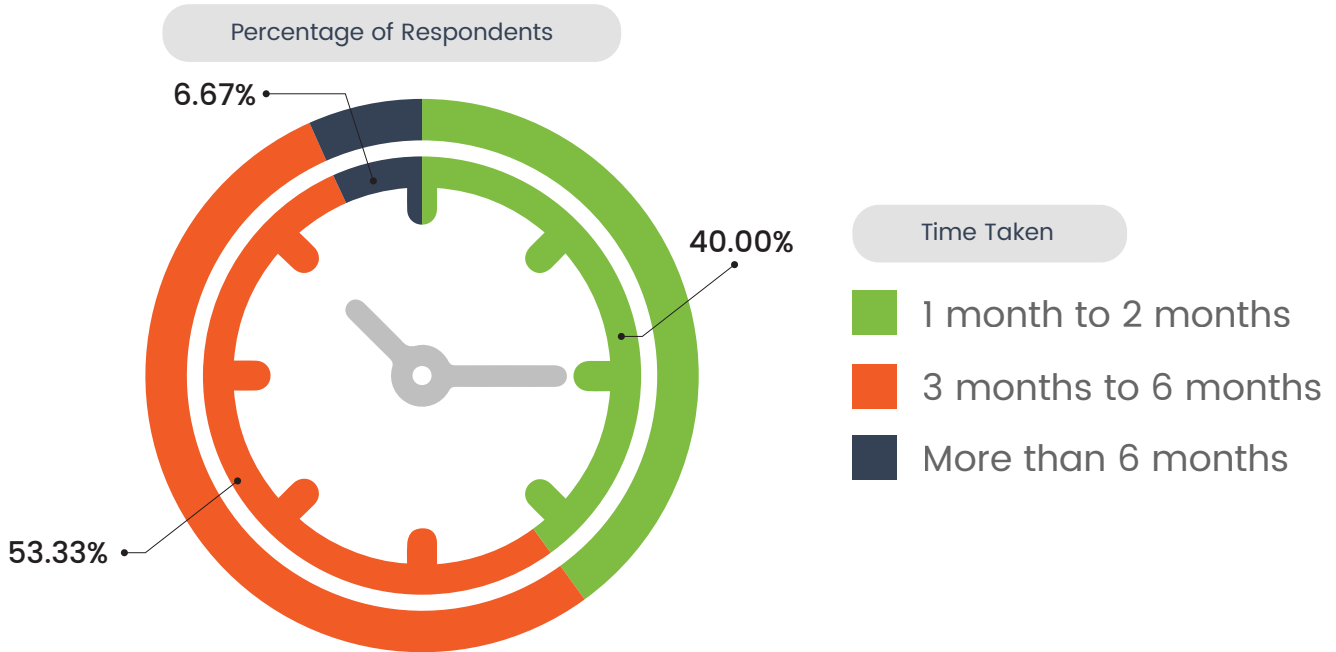


Figure 4: Time taken to successfully register a philanthropic organisation

Despite the challenges with documentation and the time frame almost 65% of the respondents point out that it is very cheap to register an organisation in Botswana and the registration is done in person due to limited online services for registration (Figure 5).

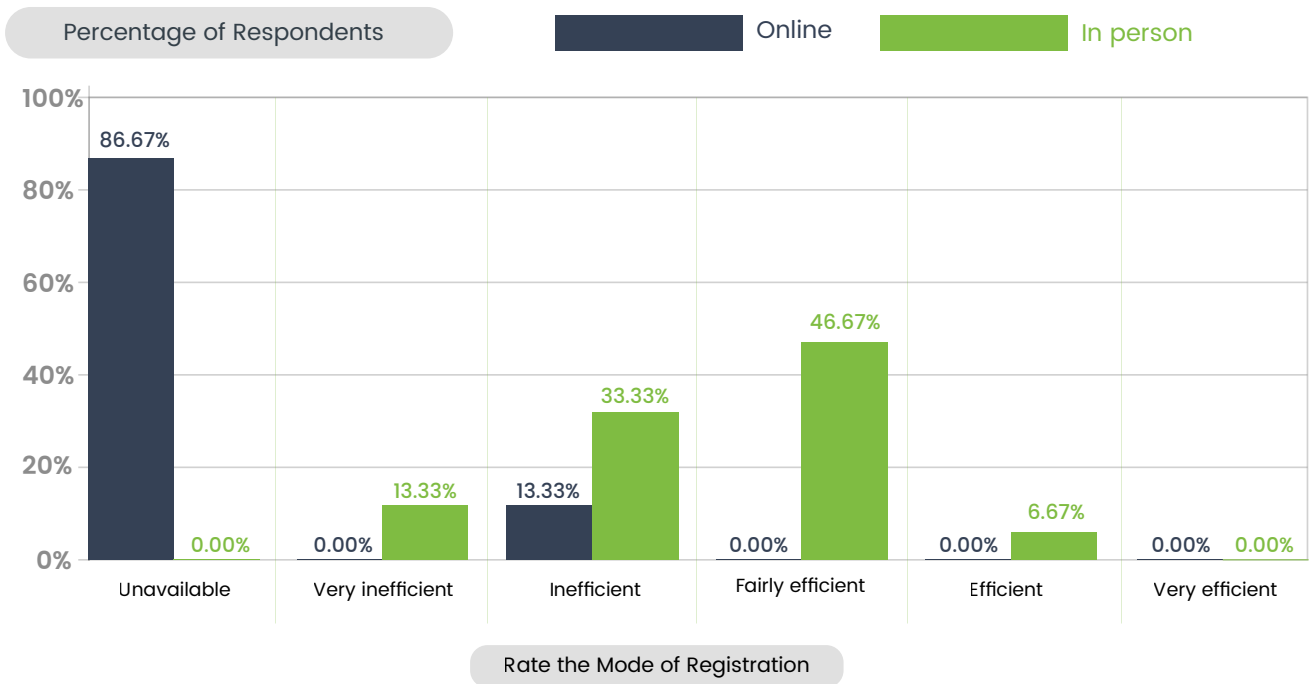


Figure 5: Online and physical registration of philanthropic organisations



More than two thirds of the respondents (70%) pointed out that they renew their licences every year which is in line with the requirements of the Registrar of Societies in Botswana (Figure 6).

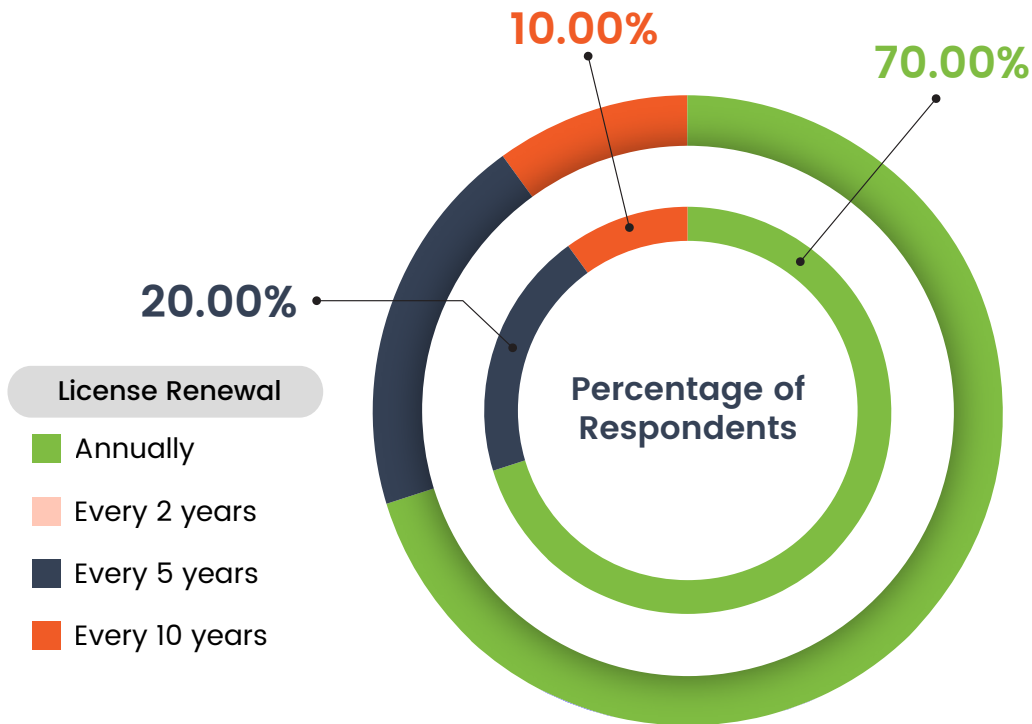


Figure 6: Renewal of licences for philanthropic organisations

3.3 Taxation and incentives for giving

The tax regime of a country guides the financial operations of any organisations that operate within its borders. In Botswana, the Botswana Unified Revenue Services is the mother body responsible for all tax-related matters guided by a number of related pieces of legislation. To establish the tax environment of philanthropic organisations in Botswana, the survey sought to establish if there is a specific tax code for philanthropic organisations in the country. Sixty-three percent (63%) of the respondents pointed out that there is indeed a specific tax code for philanthropic organisations whilst the rest (37%) are not aware of such a code. On the number of laws that governs the taxation of philanthropic organisations, more than 60% point



out that indeed there are governing tax laws although they are not sure of the exact number.

On exemption from taxes, a majority of the respondents pointed out that philanthropic organisations are largely exempted from paying taxes. These taxes include income tax, customs duties, Pay As You Earn (PAYE) and Value Added Tax (VAT) amongst others (Figure 7).

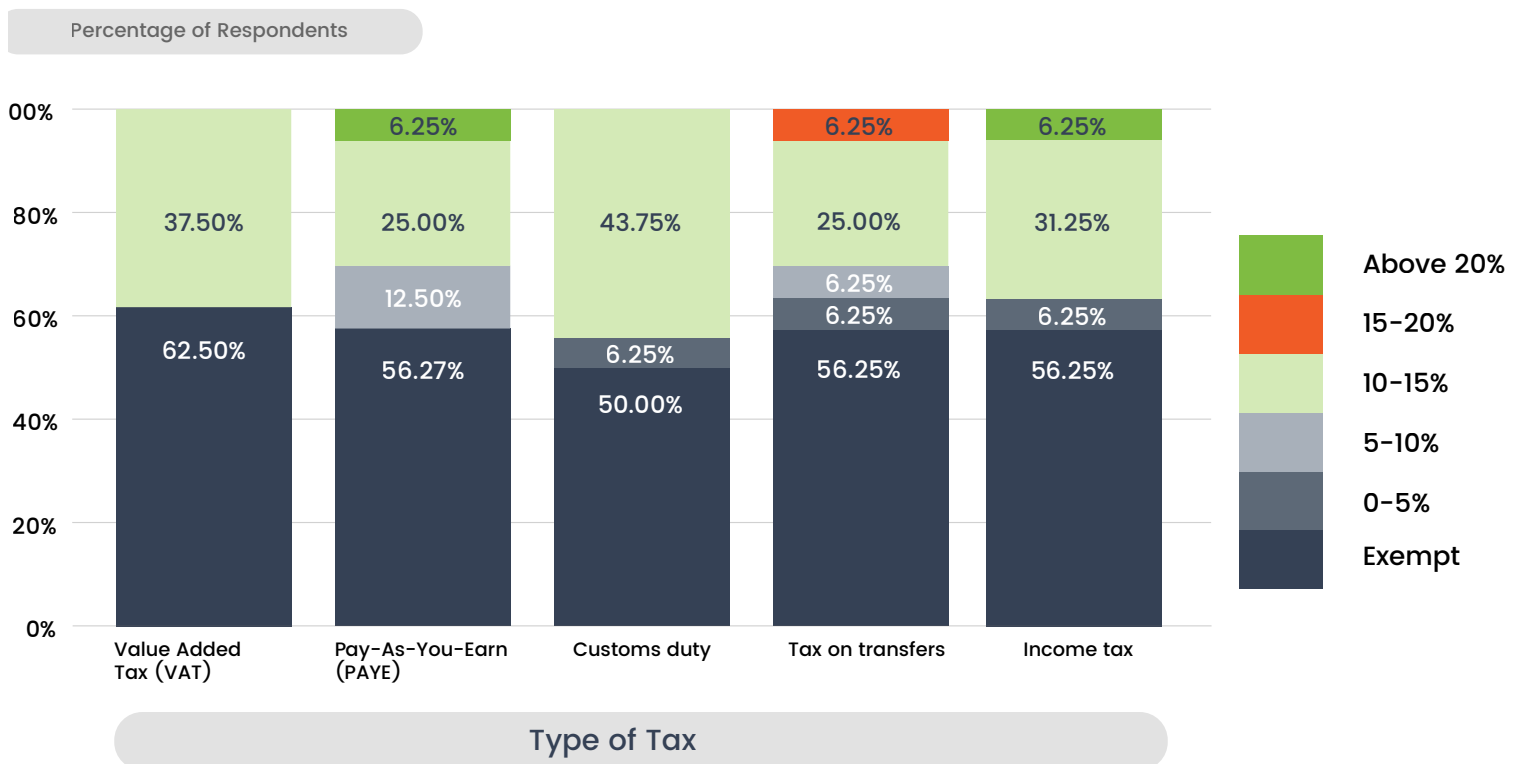


Figure 7: Tax rates for philanthropic organisations

Governments can through their policies encourage the practice of giving or rewarding those who give with incentives such as tax reductions or exemptions. However, 68% of respondents to the survey point out that in Botswana, there is no policy that encourages philanthropy or the act of giving (Figure 8). Furthermore, the survey shows that there are no tax incentives to those who give in the country.



Existence Of Philanthropy Policy

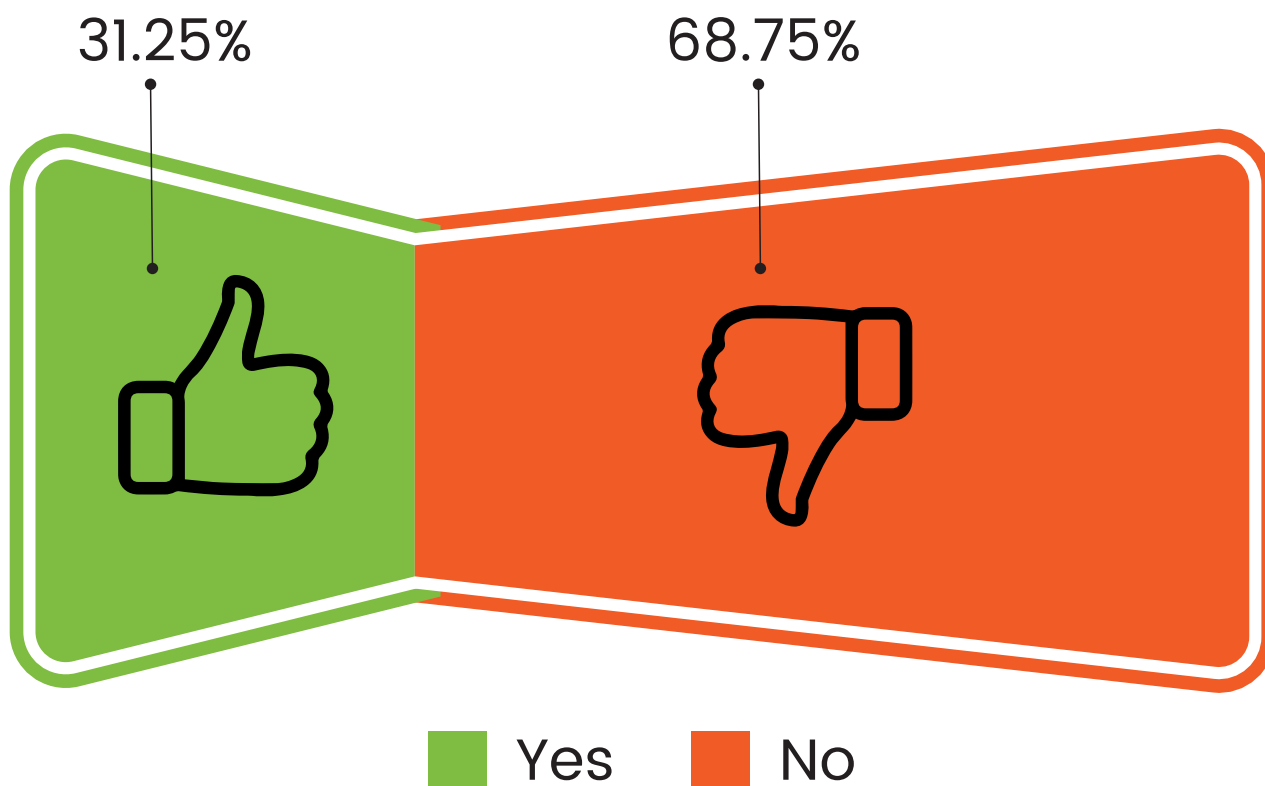


Figure 8: Is there a policy that encourages philanthropy or giving practices in Botswana?

3.4 Regulating the movement of money within and outside Botswana

Botswana was placed on a grey list by the FATF on account of having loopholes in its financial system that could encourage money laundering. This, therefore, forced the country to tighten its laws on the movement of money. Respondents pointed out that there are laws that regulate the movement of money both internally and externally although most are not aware of the exact number of laws. Despite the presence of these laws, most responding organisations still feel the movement of money both within Botswana and across borders is still fairly flexible (Figure 9).

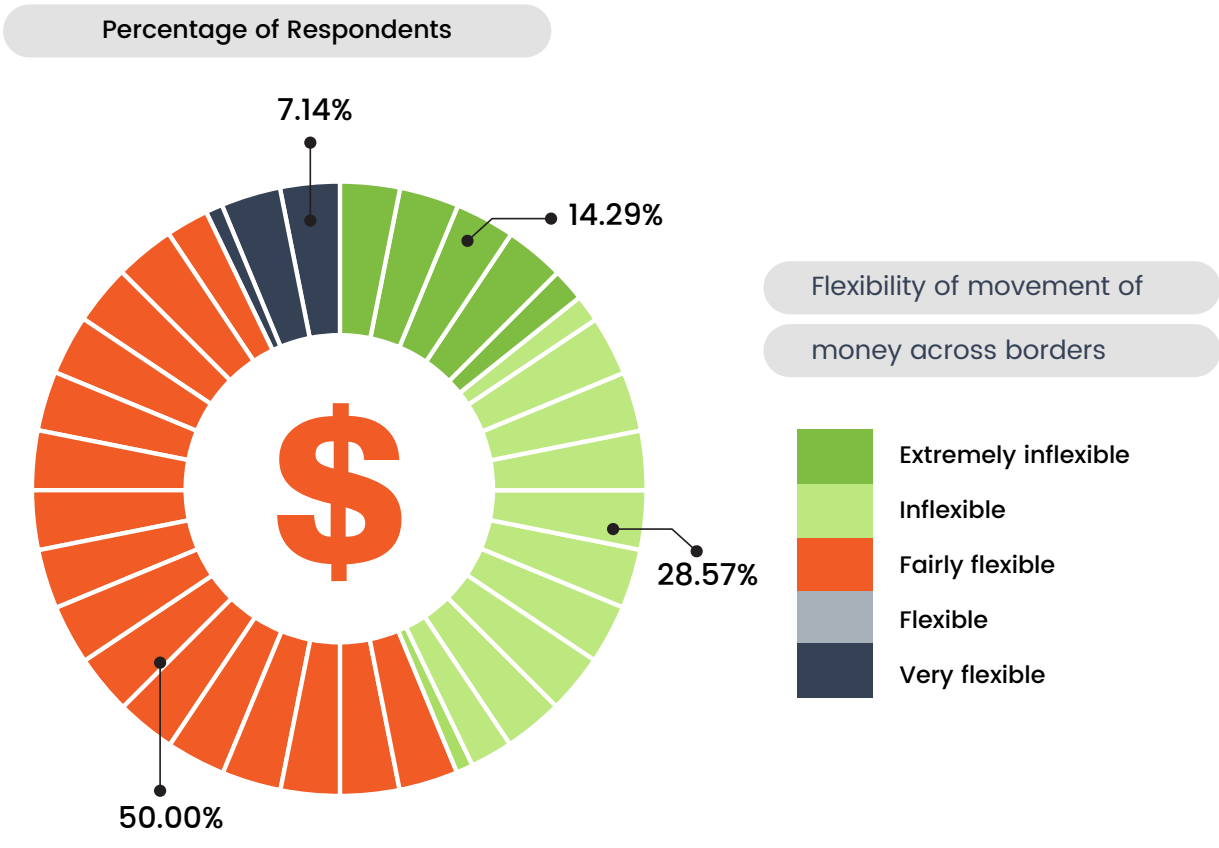


Figure 9: The flexibility of the movement of money across borders

The survey further points out that the charges to the transfer of money are fair and that organisations are allowed to retain money in the currency of the country of origin when they collect it in Botswana (Figure 10).

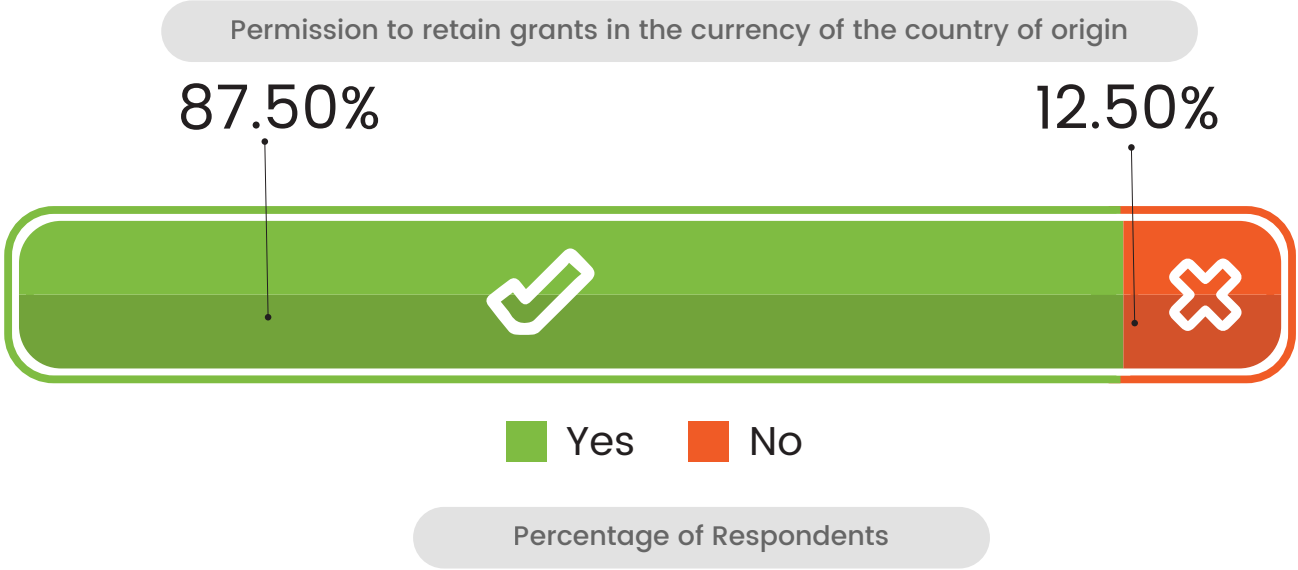


Figure 10: Permission to retain grants in the currency of the country of origin



3.5 Supporting advocacy-focused work

The survey also points out that there are laws that restrict funding of advocacy based work. 58% of the respondents pointed out that although they are aware of existence of laws, they were not sure how many laws there are.

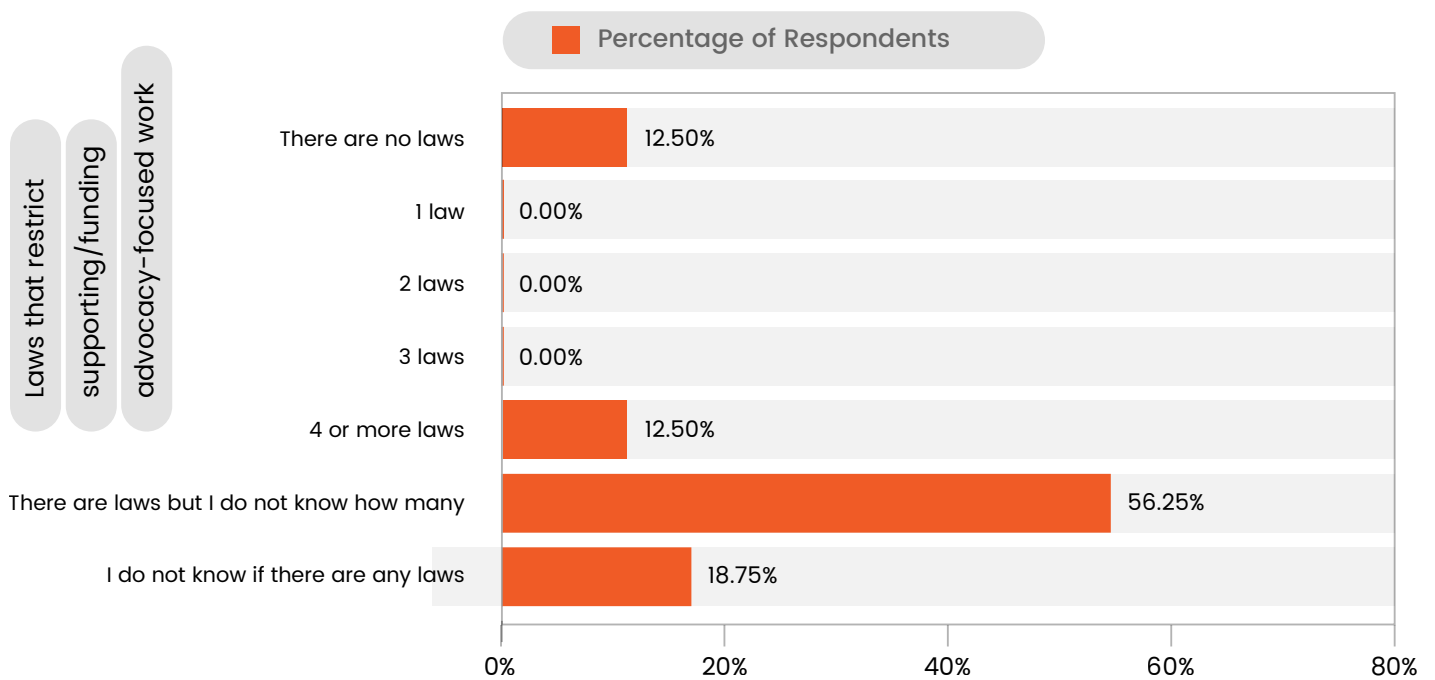


Figure 11: Laws that restrict supporting/funding advocacy-focused work



4.0 CONCLUSION

The level of development of a country is largely measured on how it takes care of its vulnerable citizens (Botlhale, Mothusi, & Motshwegwa, 2016). This, therefore, puts philanthropic work as an important part of governing a state. The environment that is created through government policies, therefore, is critical in ensuring that philanthropic organisations carry out their functions with minimal disruptions. In Botswana, there are a number of laws and policies that regulates philanthropic organisations from registration, compliance, taxation and all other aspects which were summarized in the report. The survey of Botswana points out that the registration process is flexible and takes a period of 3-6 months to complete the registration. Philanthropic organisations are largely exempted from tax in Botswana but the challenge remains that there is no direct policy that supports charity organisations or rewards those who support these types of organisations. The Study therefore rates the overall environment of philanthropic organisations in Botswana as friendly although there are a number of improvements that could be done. These improvements should largely target the areas of online registration of these organisations, government funding as well as the rewarding and recognition of organisations and individuals who donate to and support philanthropic organisations.



5.0 RECOMMENDATIONS

Based on the survey results and the desktop study, the report proposes the following recommendations to improving the working environment of philanthropic organisations in Botswana;

- There should be direct government funding to support the works of philanthropic organisations
- The government should move to improve online registration of philanthropic organisations as a way of improving the turnover period for registration.
- Philanthropic organisations should be totally exempted from payment of taxes as their work is geared towards improving the welfare of the people and is non-profit making in nature
- The government should create policies that rewards philanthropic organisations as a way of encouraging more organisations to engage in the art of giving and helping
- The government should reward organisations that donate to philanthropic organisations through tax exemptions and other financial benefits



REFERENCES

Botlhale, E., Mothusi, B., & Motshwegwa, B. (2016). *Social Protection Policies in Botswana*. Gaborone: mmegi Printers.

BURS. (2022, January). *Revenue Tax Laws*. Retrieved January 05, 2023, from Botswana Unified Revenue Services: <https://www.burs.org.bw/index.php/treaties-and-legislation/legislation/revenue-laws>

Makwape, M. (2019, July 30). *Botswana grey listed for money laundering, financing terrorism*. Retrieved December 15, 2022, from Mmegi: <https://www.mmegi.bw/news/botswana-grey-listed-for-money-laundering-financing-terrorism/news>

Morapedi, S. (2018). Botho as a Way of Enhancing Problem Solving in a Community Project: The Case of Moshupa. *Botswana Notes and Records*, 178-188.

Republic of Botswana. (1972). *Registrar of Societies Act*. Gaborone: Government of Botswana.

Republic of Botswana. (2006). *Income Tax Act*. Gaborone: Government of Botswana.

Republic of Botswana. (2014). *Botswana Anti Terrorism Act*. Gaborone: Government of Botswana.

Republic of Botswana. (2022). *Financial Intelligence Act*. Gaborone: Government of Botswana.



About SIVIO Institute

SIVIO Institute (SI) is an independent organisation focused on ensuring that citizens are at the centre of processes of socio-economic and policy change. It aims to contribute towards Africa's inclusive socio-economic transformation. It is borne out of a desire to enhance agency as a stimulus/catalyst for inclusive political and socio-economic transformation. SIVIO's work entails multi-disciplinary, cutting edge policy research, nurturing citizens' agency to be part of the change that they want to see and working with communities to mobilize their assets to resolve some of the immediate problems they face.

SIVIO institute has three centres/programs of work focused on; (i) civic engagement (ii) philanthropy and communities (ii) entrepreneurship and financial inclusion. In the process SI addresses the following problems:

- » Inadequate performance of existing political and economic system
- » Increasing poverty and inequality
- » Limited coherence of policies across sectors
- » Ineffectual participation in public processes by non-state actors
- » Increased dependence on external resources and limited leveraging of local resources