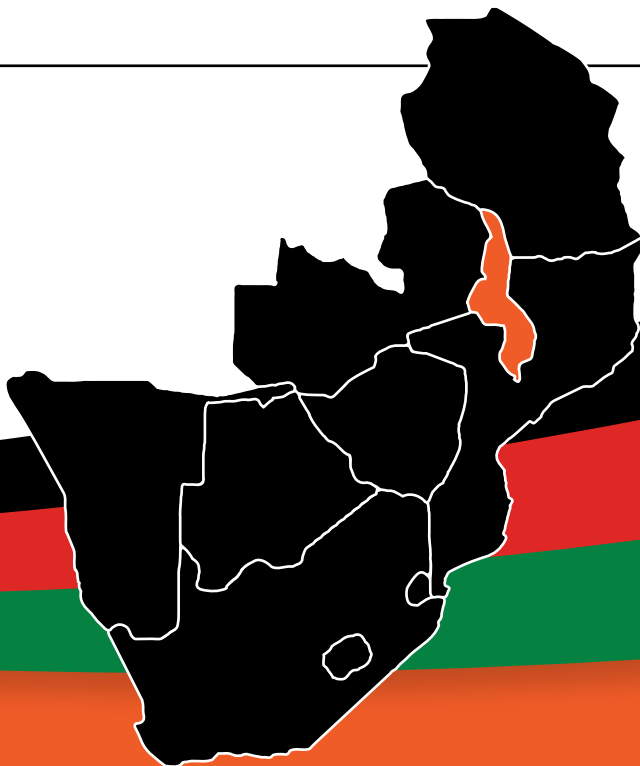


# Understanding the Legal Framework for Philanthropy in Southern Africa

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## Malawi Report

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# ACKNOWLEDGEMENTS

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## EXECUTIVE SUMMARY

Philanthropy is a key aspect of human existence as it is an act of giving that has a positive impact on the part of another. This aspect, however, has not received much study until recently, hence the need for reports like this one that will focus on the legal frameworks in existence in SADC countries in general while this paper focuses on the Nation of Malawi. The existence or the absence of legal and policy frameworks is likely to impact the carrying out of this critical service to disadvantaged communities. This report aims to analyse the existing laws and also check if those who are supposed to operate in adherence to these laws are aware of and are taking advantage of them.



This report seeks to understand the laws that are in place that affect philanthropy either positively or negatively. The research was divided into six sections that focused on laws that cover:

- Ease of registration
- State oversight and compliance to remain registered
- Taxation regime and giving
- Resource mobilisation and movement of funds
- Incentives-to promote giving as part of national development
- Supporting governance and human rights-focused work

The research was conducted in two main ways, a qualitative part that sought to understand the laws and policies that affected philanthropy in Malawi by studying the Constitution and other relevant policy documents that impact on philanthropy. The second section involved an online survey of fifteen (15) organisations, the majority (73%) of which have been in operation for more than ten years. 60% of them are registered as charity organisations. Each responded to questions pertaining to the legal policies that cover each of the six areas highlighted earlier.

The qualitative research process that involved reading and analysing policy documents like the Constitution of Malawi and other related documents with the help of some lawyers to help interpret the laws revealed that there is a well-established legal and policy framework that supports the



work of charitable organisations well to execute their duties. For example, the NGO Act, Handicapped Persons Act, Trustees Incorporation Act and the Companies Act all give guidelines on the registration and regulation of different organisations depending on what work they do. Taxation act and the Stamp Duties Act guides philanthropy organisations on the tax and duty exemptions that are available to them when they do charitable work.

There are also incentives that organisations can benefit from in addition to tax exemptions. Licencing exemptions exist for vehicles used in philanthropy. Those who sell for charity also have licencing exemptions.

Many other policies are in place that encourages non-profit organisations to register and participate in Malawi.

Despite the availability of such a framework of laws and policies, the respondents in the survey seem to be unaware of the laws, and in cases when they are aware they don't seem to be aware of the number of laws or the extent to which they can take advantage of them.

All of the surveyed organisations were registered and 73% indicated they renewed their registration annually, a sign of compliance with the regulatory authorities. 92% indicated they submitted reports to the regulatory authorities.



When it comes to taxation issues, despite the presence of many laws and policies, the respondents seemed not to know much about the laws designed to make their work easy. For example, they had vague ideas about the percentage exemptions for various taxes.

When it comes to giving and its impact on national development, most respondents indicated that they are aware of policies that promote philanthropy but there is concern over the lack of philanthropy promotion agency in Malawi. This leaves a gap where less impact results because stakeholders are not aware of policies that make their work easier.

When it comes to the movement of money for charity work, there is a concern that the costs/fees when receiving money from outside the country are high.

From the findings of this report it is recommended that since there is such a robust legal framework for philanthropy work in Malawi and vague knowledge of the laws that make charity work easy by existing participants, it is important for government and other stakeholders to make a deliberate effort to sensitise current and future stakeholders of the legal framework that is in existence and updates on any changes that take place in any of these policies and laws.

There is also a need for the institution of a specific philanthropy promotion agency which at the moment is not available in Malawi. Members are also encouraged to continue adhering to registration policies and renew their registration regularly as they are doing but at the same time, everyone will benefit if the registration costs are reduced to amounts that are affordable to more stakeholders.

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## ACRONYMS

<b>EU:</b>	European Union
<b>NGO:</b>	Non-Governmental Organisation
<b>PDF:</b>	Portable Document File
<b>SADC:</b>	Southern Africa Development Community
<b>USAID:</b>	United States Agency for International Development



# 1.0 INTRODUCTION

## 1.1. Background of the study

Philanthropy is a worldwide human trait that has been embraced historically. While scholars debate its meaning, it is generally accepted that the act is meant to have a positive effect on another party's welfare. The Merriam-Webster Dictionary defines philanthropy as an act or gift done or made for humanitarian purposes or an active effort to promote human welfare<sup>1</sup>. Philanthropy has been an integral part of the human race such that in the tradition of the Ancient Greeks, philanthropy was inseparable from moral philosophy, and it was an ultimate expression of civilization (Hargrave & Lumley, 2015).

Recognising the important role philanthropy plays in modern society, this study seeks to analyse the existing legal and policy frameworks that either inhibit or promote philanthropy and its practices in the SADC region. Despite the existence of a large number of philanthropic organisations and philanthropic activities in the SADC region, literature on their operation and the environment they operate in remain scanty. This has also been so considering the fact that sociologists began to study philanthropy more recently (Barman, 2017).

## 1.2. Purpose and objective of the study

The main purpose of this study is to influence policies that enhance and promote philanthropy by identifying and examining the existing legal frameworks that either inhibit or promote philanthropy and its practices in the SADC region. This analysis sought to examine laws affecting; (i) ease of registration, (ii) compliance processes and procedures, (iii) tax regimes,

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1 Philanthropy Definition & Meaning - Merriam-Webster



(iv) incentives to promote the growth and role of philanthropy in national development, and (v) movement of financial resources within and across borders and (vi) support for advocacy work.

Specifically, this analysis sought to:

- Identify and assess how existing laws and public policies impact practices of giving
- Raise awareness of the challenges confronting the philanthropy sector
- Influence legal and policy reforms for an improved philanthropy environment

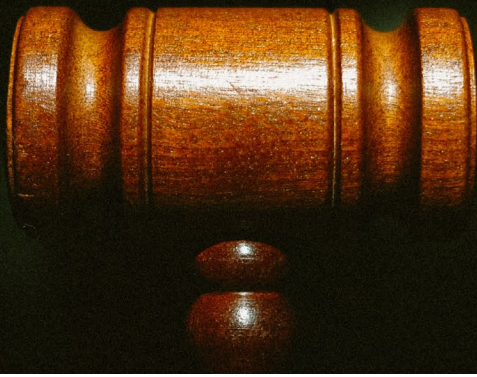
### 1.3. Research methodology

We used both quantitative and qualitative methods in this study. Data on the existing laws that affect philanthropy were sourced from the Constitution of Malawi and other policy documents. Quality was ensured, and a legal expert helped with the literature review and interpretation of the constitution's various provisions regarding philanthropy. The data were entered in a Microsoft excel sheet, and all the laws and policies affecting the above-highlighted six areas were documented. Source for each of the laws cited was provided, and where the law was available online, a link was provided. The rest of the laws were provided in PDF format.

Quantitative data was gathered through an online survey. A survey link was sent to various organisations implementing philanthropic activities in Malawi. These organisations were identified through the Non-Governmental Organisation Board of Malawi website<sup>2</sup>. Follow-ups were made through phone calls to meet the targeted 15 respondents.

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2 myNGO – manage NGOs online



## 2.0. KEY FINDINGS

Findings from the study provide an assessment of the prevailing legislative environment for philanthropy in Malawi and results from the survey. The results from the desk-top study largely highlight the existence of a well-established legal and policy framework for philanthropy in Malawi. On the other hand, the results from the survey highlight a lack of adequate knowledge on the legislative environment for philanthropy in Malawi on the side of the organisations and the nonexistence of a philanthropy promotion agency.

### 2.1. LEGISLATIVE ENVIRONMENT – REVIEW OF CURRENT LEGAL FRAMEWORK INFLUENCING PHILANTHROPY IN MALAWI

We reviewed the prevailing environment in Malawi as far as philanthropy is concerned. Our review of the legal framework affecting philanthropy in Malawi revealed the following in each thematic area:

#### 2.1.1. Ease of registration

Philanthropic organisations in Malawi are largely registered through the Non-Governmental Organisation Act Cap 5:05 (2001). The Act guides the operation of non-governmental organisations in Malawi. The Act also provides for the rights and obligations of Non-Governmental Organisations. As regards registration, the Act regulates the registration process for organisations, including those meant to cater for the public welfare (public benefit purposes). Furthermore, the Act gives detail of requirements for



registration of philanthropic organisations, including the registration fee. Besides the Non-Governmental Organisation Act Cap 5:05, registration of philanthropic organisations is also affected by the Trustees Incorporation Act Cap 5:03 of the Laws of Malawi (1962), Handicapped Persons Act Cap 33:02 of the Laws of Malawi (1972), and Companies Act 43:02 of the Laws of Malawi (2013), among others. The Trustees Incorporation Act governs the registration process of diverse trusts and regulates trusts created thereunder. The Act provides for steps to be taken to incorporate philanthropic organisations, i.e., charitable trusts.

The Handicapped Persons Act was enacted to improve the welfare of handicapped persons and to regulate organisations that promote the welfare of the handicapped persons. The Act affects philanthropy as it regulates the registration of associations whose objects include overseeing the welfare of the handicapped and guides on the registration requirements.

Companies can also champion philanthropy. The registration of such companies is guided by the Companies Act 43:02 of the Laws of Malawi (2013). The Companies Act was created to govern and/or regulate the formation of companies and existing companies in Malawi. The Act allows for the registration of companies that champion philanthropic causes (i.e., Companies limited by guarantee) and guides on the registration and conduct of such companies.

### **2.1.2. State oversight and compliance to remain registered**

In addition to governing the registration of philanthropic organisations, the Non-Governmental Organisation Act Cap 5:05 (2001) also regulates such organisations' conduct, including compliance issues. The Act mandates NGOs created under it to operate within the confines of the provisions of the Act and further enjoins the NGOs to furnish the NGO Council with reports pertaining to their work. The Provision for the organisations to furnish the NGO Council with reports pertaining to their work is also highlighted in

the Handicapped Persons Act Cap 33:02, which regulates the conduct of organisations championing the welfare of the Handicapped.

On the other hand, Trustees Act Cap 5:02 of the Laws of Malawi (1967) governs compliance issues of trusts registered under it. The Act provides for the duties and powers of trustees of any trusts, including trustees of philanthropic organisations such as charitable trusts. Like the Trustees Act, the Companies Act also regulates the compliance and conduct of companies registered under it. The Act enjoins every company created thereunder to operate within the prescriptions of the law, and there are penalties imposed on companies found to be non-compliant.

Besides the Acts mentioned above, compliance issues are also guided by the National NGO Policy (2019). The Policy provides an overall framework and direction within the NGO Sector. The Policy also provides a foundation for strengthening NGOs' partnerships towards its contributions to the underlying national development strategies. In addition, the Policy regulates the conduct of NGOs in Malawi.

### **2.1.3. Taxation regime and giving**

Tax issues in Malawi are governed by the Taxation Act Cap 41:01 of the Laws of Malawi (1964). The Act regulates the imposition, calculation, and collection of diverse taxes in Malawi. As regards philanthropy, the Act exempts charitable organisations from income tax, among others. In addition, people who contribute to philanthropic causes (charities) are also given some allowable deductions on their income. The Taxation Act is complemented by the Stamp Duties Act Cap 43:01 of the Laws of Malawi (1969), which regulates the payment of stamp duties, penalties, etc., in respect of several transactions. The Act advances philanthropy by exempting the payment of stamp duties on any conveyance or transfers made in favour of charitable organisations, associations, and/or causes.



#### **2.1.4. Resource mobilisation and movement of funds**

Regarding resource mobilisation, Malawi depends on the Malawi Diaspora Engagement Policy (2017). The Policy was created by the Malawian Government to foster the relationship between the Government and the diaspora. The Policy provides for the removal of any structural barriers to financial remittances made by the Diaspora towards philanthropic work.

On the other hand, the movement of funds is largely regulated by the Exchange Control Act cap 45:01 of Malawi Laws (1989), which was enacted to control and regulate the flow and ownership of foreign currency. The Act also regulates the Malawian currency. Among others, the Act gives powers to the Minister to make regulations for the purpose of control of foreign exchange, bullion, and Malawi currency. The Act also provides for the prosecution and fining of those found on its wrong side, which in a way, has a bearing on the movement of funds meant for philanthropic activities.

#### **2.1.5. Incentives to promote giving as part of national development**

There is also an existing legal and policy framework that promotes philanthropy's growth and role in national development in Malawi. Some notable provisions include the Road Traffic Act Cap 69:01 of the laws of Malawi (1998). The Road Traffic Act regulates road traffic and the registration of all vehicles in Malawi. In addition, the Act advances philanthropic work by providing exemptions in terms of licensing motor vehicles used in charitable works. The Communications Act 68:01 of the Laws of Malawi (2016) also promotes philanthropy in Malawi. The Act governs the provision of Communication services in Malawi and promotes philanthropic work by exempting the payment of postal charges for articles meant for charitable purposes.

The business side of philanthropic organisations is regulated by the Business

Licensing Act Cap 46:01 of the Laws of Malawi (2012) and Customs Procedure Code CPC 4000.431/4071.431. While the Business Licensing Act makes no provision for a requirement of a license for persons selling items for charitable purposes, the Customs Procedure Code provides an exemption from import duties on all the items imported for charitable purposes,

Policy-wise, philanthropy in Malawi is promoted by National NGO Policy (2019), National Social Welfare Policy (2018), and Community Development Policy, to mention a few. The NGO policy provides a foundation for strengthening NGOs' partnerships towards its contributions to the underlying national development strategies. On the other hand, the National Social Welfare Policy provides a conducive environment for service delivery at the local and national levels. These services are largely philanthropic, as the aim is to improve the social well-being of Malawians. The policy regulates and coordinates the delivery of social welfare services. The Community Development Policy offers State and Non-State actors the opportunity to engage with communities in a more coordinated way to meet local needs, address intractable problems, build capacity, and support local development efforts. The Policy aims at contributing towards effective and sustainable socio-economic development through a clearly defined, consistent, and collaborative people-centred approach.

### **2.1.6. Supporting governance and human rights-focused work**

The Constitution of Malawi (1994) is the umbrella supporting governance and human rights-focused work. The constitution provides for a bill of rights that includes freedom to form associations and freedom of expression, and as such, these laws enable the advocacy of political and civil rights work. In addition, the Non-Governmental Organisation Act Cap 5:05 also supports governance and human rights-focused work by allowing the registration of NGOs which directly deal with the issues of civil and political rights.

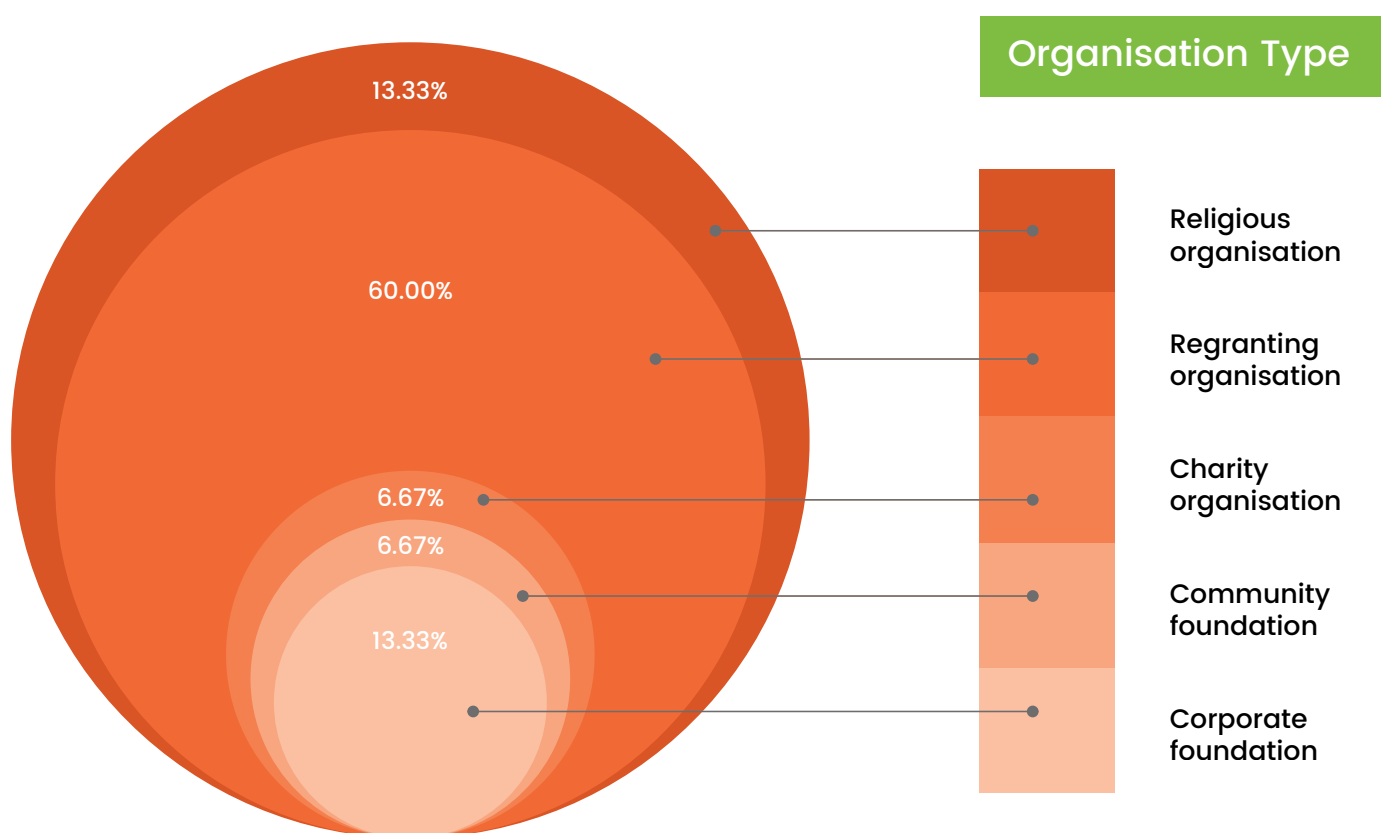




## 2.2. KEY FINDINGS FROM THE SURVEY

### 2.2.1. Background of organisations surveyed

We sampled several organisations and managed to get a response from 15 of them. Most of these organisations (73%) had been in existence for more than 10 years, which signified experience of the environment they operate in. The organisations were categorized by their type, and 9(60%) of the 15 organisations identified themselves as charity organisations, and the rest of the groups shared the remaining 40% (Figure 1).



*Figure 1: Type of Organisation*

The sampled organisations indicated varied funding sources, and some



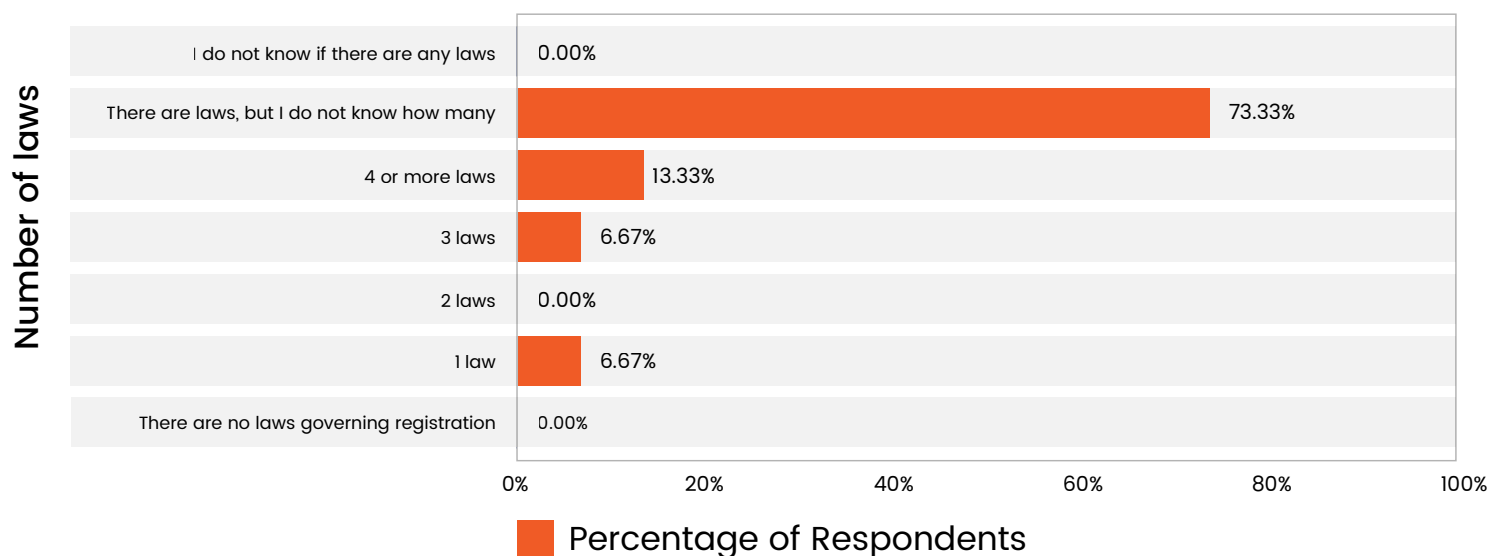
indicated multiple funding sources. Most of the organisations (60%) indicated that they are funded through individual donations, while 47% indicated that they receive funding from Official Aid, e.g., European Union (EU), USAID,

Australian Aid, etc. Interestingly, one organisation indicated that it offers consultancy services and generates funds for philanthropic activities. The rest of the organisations indicated that they get funds from Private international philanthropy foundations, (e.g., Gates Foundation, Ford Foundation, Mott Foundation, Hewlett Foundation), Private African Philanthropy Foundations, Corporate Social Responsibility, and Membership.

### **2.2.2. Navigation by organisations of registration and compliance processes**

All the organisations (100%) that took part in this study indicated that they are registered. The majority of the organisations (53.33%), however, labelled the registration process as costly. The organisations also indicated that the registration process takes time and needs documents, 54% of them indicated that they are difficult to produce. Nevertheless, the production of the required documents was labelled “somewhat easy” by 46% of the sampled organisations.

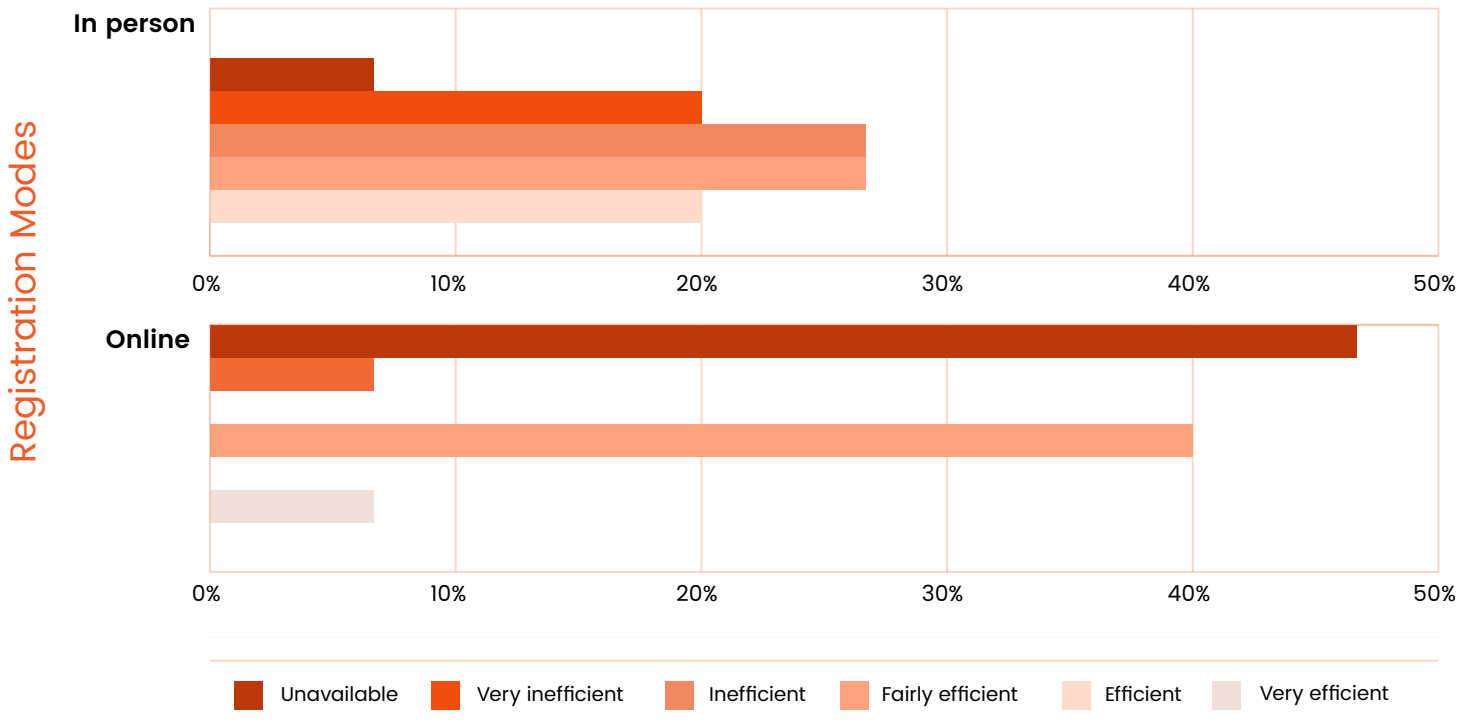
Our findings on the registration of philanthropic organisations in Malawi revealed some gaps in knowledge of the registration process. Among others, 11 of the 15 organisations (73.33%) indicated that they know there are laws that govern the registration process but could not mention how many (Figure 2).



*Figure 2: Knowledge of Laws that Govern Registration of Philanthropic Organisations*

All the organisations (100%) also mentioned that the registration process is not decentralized and that they have to travel to specific cities to register which constrains and discourages the ease of registering philanthropy organisations. In addition, 46.7% indicated that the online registration process is not available in Malawi (Figure 3). This is against the fact that the online registration process was introduced by the Department of the Registrar General<sup>3</sup>.

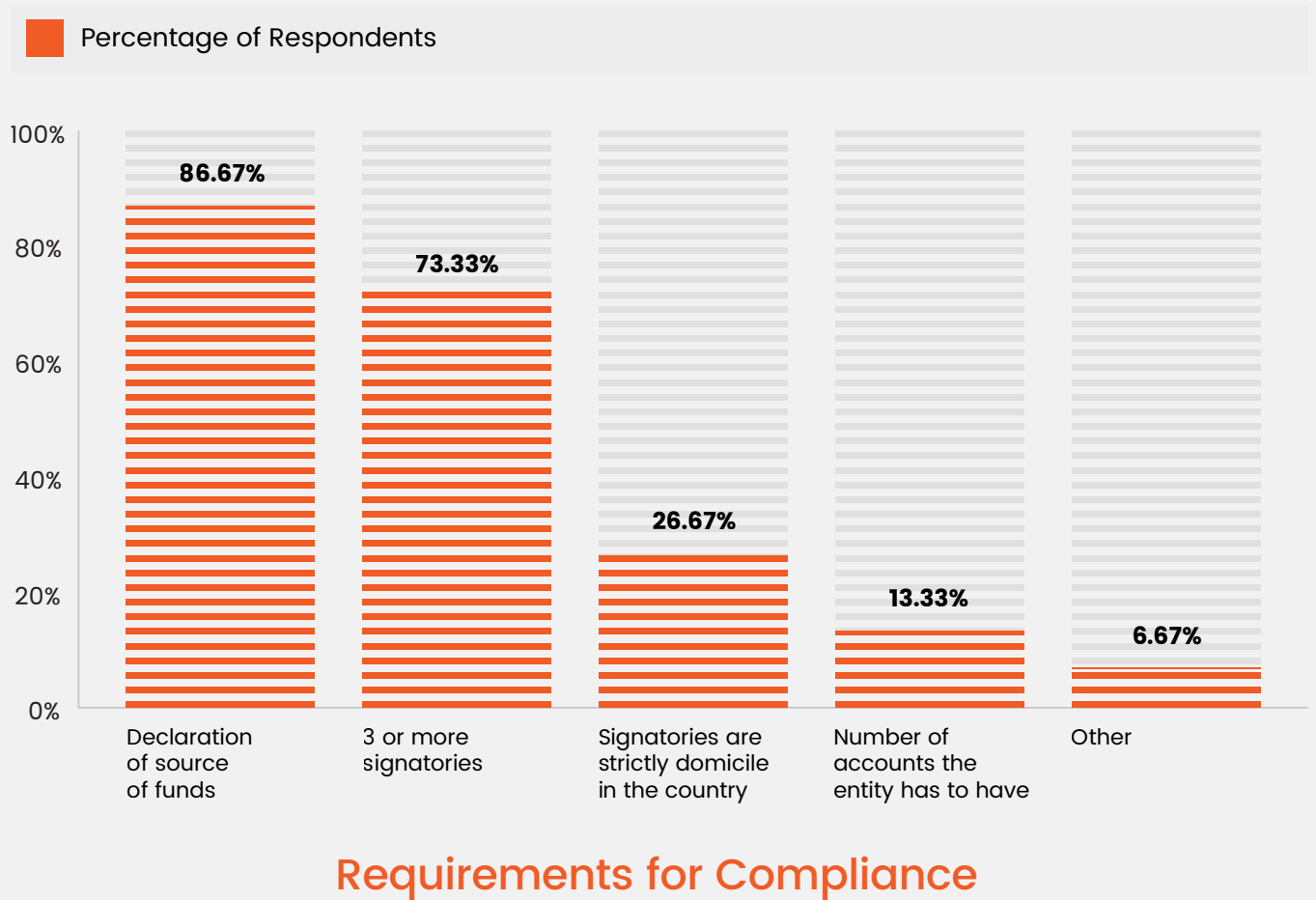
<sup>3</sup> Department of the Registrar General



*Figure 3: Modes of Registering Organisations in Malawi*

In terms of compliance, 60% of the organisations indicated that their license requires renewal, and 72.7% of these indicated that they renew their registrations annually. The majority of the organisations (86.67%) also demonstrated knowledge of the existence of a regulatory body for philanthropic organisations in Malawi and 92.31% indicated that they submit reports to this regulatory body, signifying compliance. These reports are submitted at different intervals, but the majority (91.67%) are submitted annually.

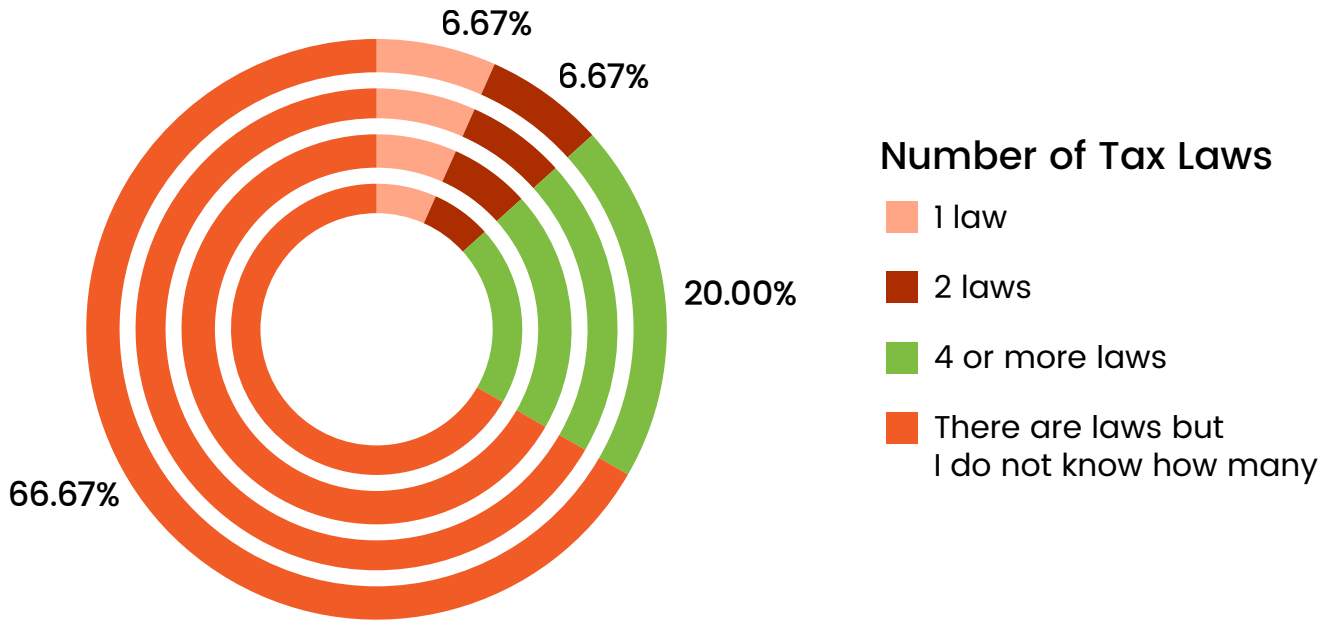
As entities that transact, the organisations also indicated various compliance issues that banks require (Figure 4). In Malawi, the commonly required compliance elements by banks are a declaration of source of funds and three or more signatories.



*Figure 4: Bank Requirements for Compliance*

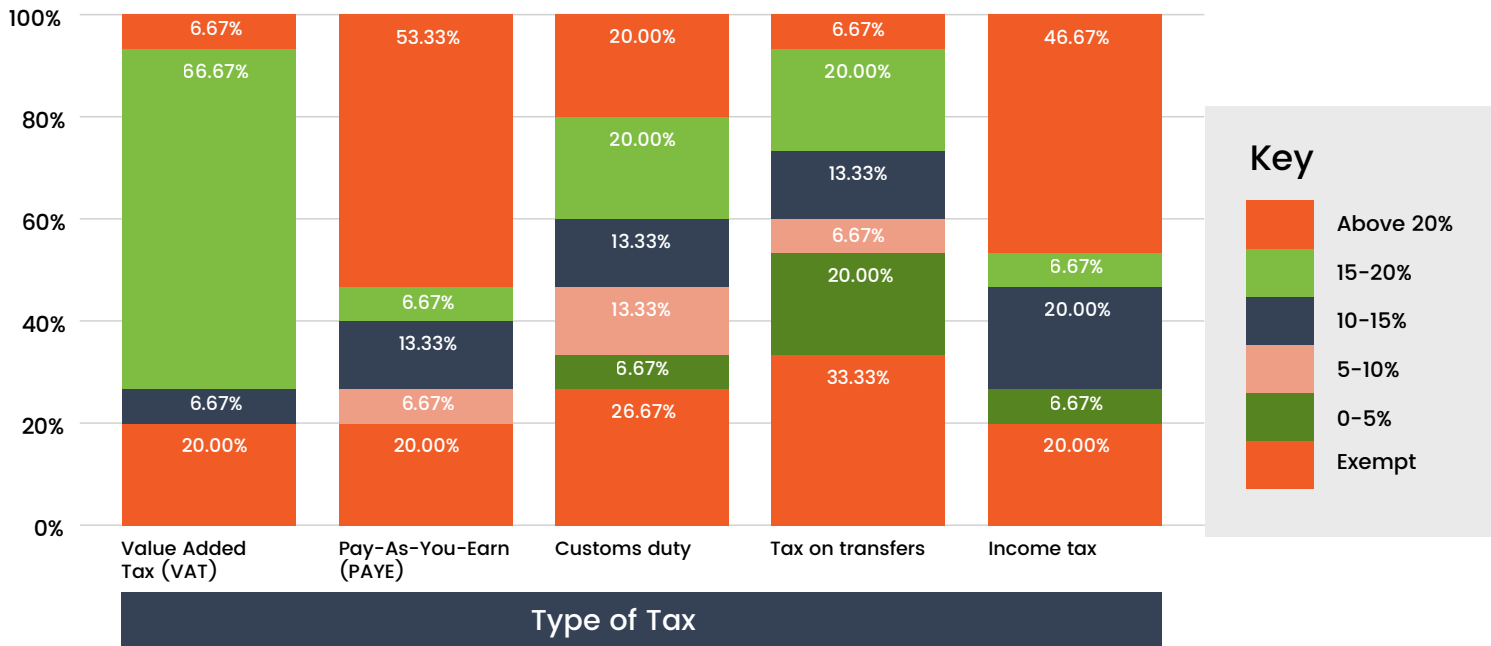
### 2.2.3. Taxation and incentives for giving

Findings also reveal limited knowledge in terms of tax issues that affect philanthropic organisations. Against our finding from the review of the legal framework in Malawi, 53.33% of the organisations indicated that there is no specific tax code for the philanthropy sector in Malawi (e.g. exemptions for Non-Profit Organisations). When asked about the number of tax-related laws that affect them, 66.67% of the organisations indicated that they are aware of the existence of such laws but could not mention how many (Figure 5).



*Figure 5: Knowledge of Tax Laws Affecting Philanthropy*

Varied tax rates were also indicated for different taxes by the organisations. While some indicated exemption, others indicated varied tax rates ranging from 5 to above 20% (Figure 6).



*Figure 6: Tax Charge Range for Philanthropic Organisations*

## 2.2.4. Giving and wider national development

On the promotion of philanthropic activities, we found that majority of the organisations are of the view that there is no philanthropy promotion agency in Malawi. Despite the presence of various ministries and policies that advance the philanthropic agenda, there is no specific philanthropy promotion agency in Malawi. Majority of the respondents (66.67%) indicated that they are aware of policies that promote philanthropy. The majority of organisations (60%) also indicated that the provisions in the policies promote philanthropy. The existence of such policies provides an opportunity for the advancement of philanthropy in Malawi if a specific philanthropy promotion agency can be put in place.

We also found that there are incentives for people that give to philanthropic organisations. However, 80% of the organisations that demonstrated knowledge of these incentives indicated that there are limits to the incentives. Despite only 33.33% of the organisations indicating that there are tax benefits for individuals giving to philanthropic organisations, the following tax incentives were established and reported by this 33.33% of the organisations (Figure 7).

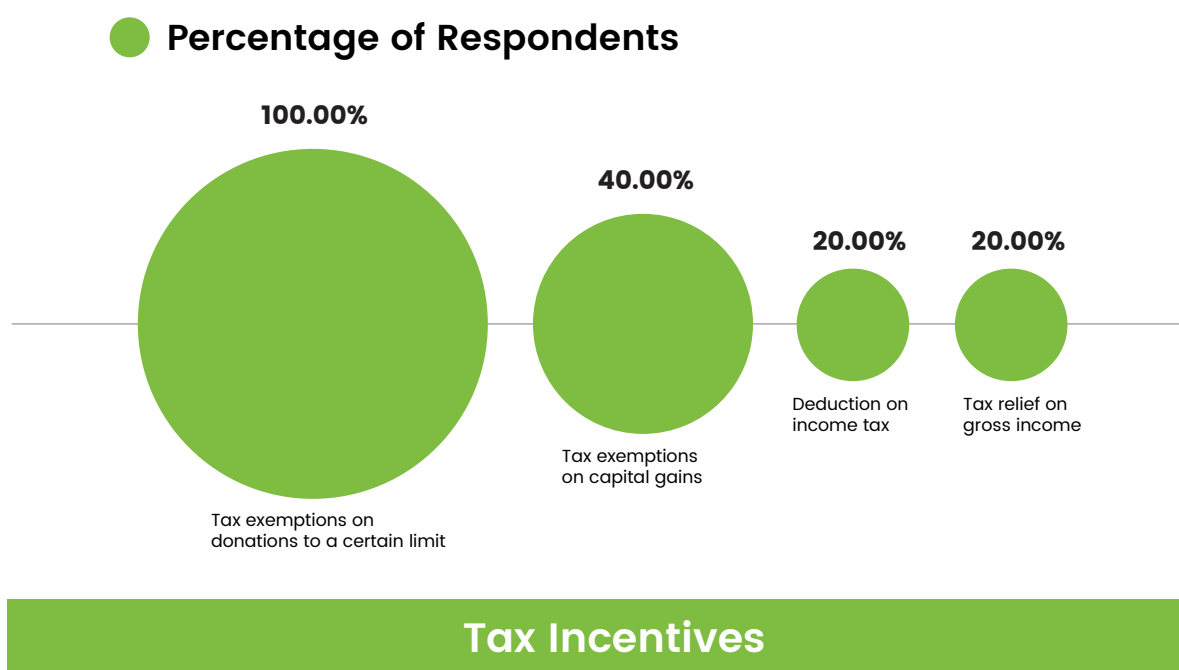
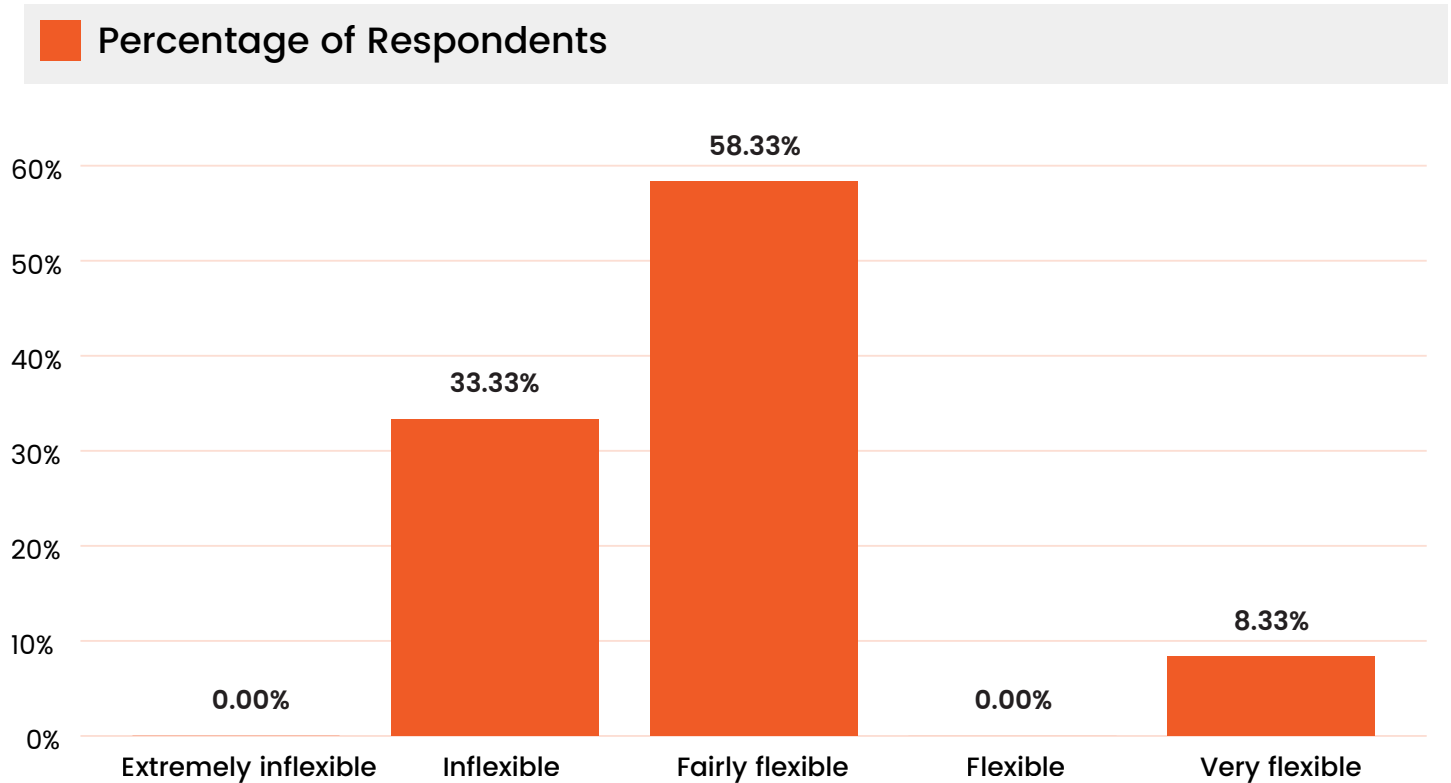


Figure 7: Tax Incentives in Malawi



## 2.2.5. Raising and moving monetary resources

In line with our findings on the review of the legal framework, results from the survey show that 80% of the organisations are aware of the existence of laws that restrict the movement of money across borders. 58.33% of the organisations labelled these laws as fairly flexible and 33.33% labelled them as inflexible (Figure 8).



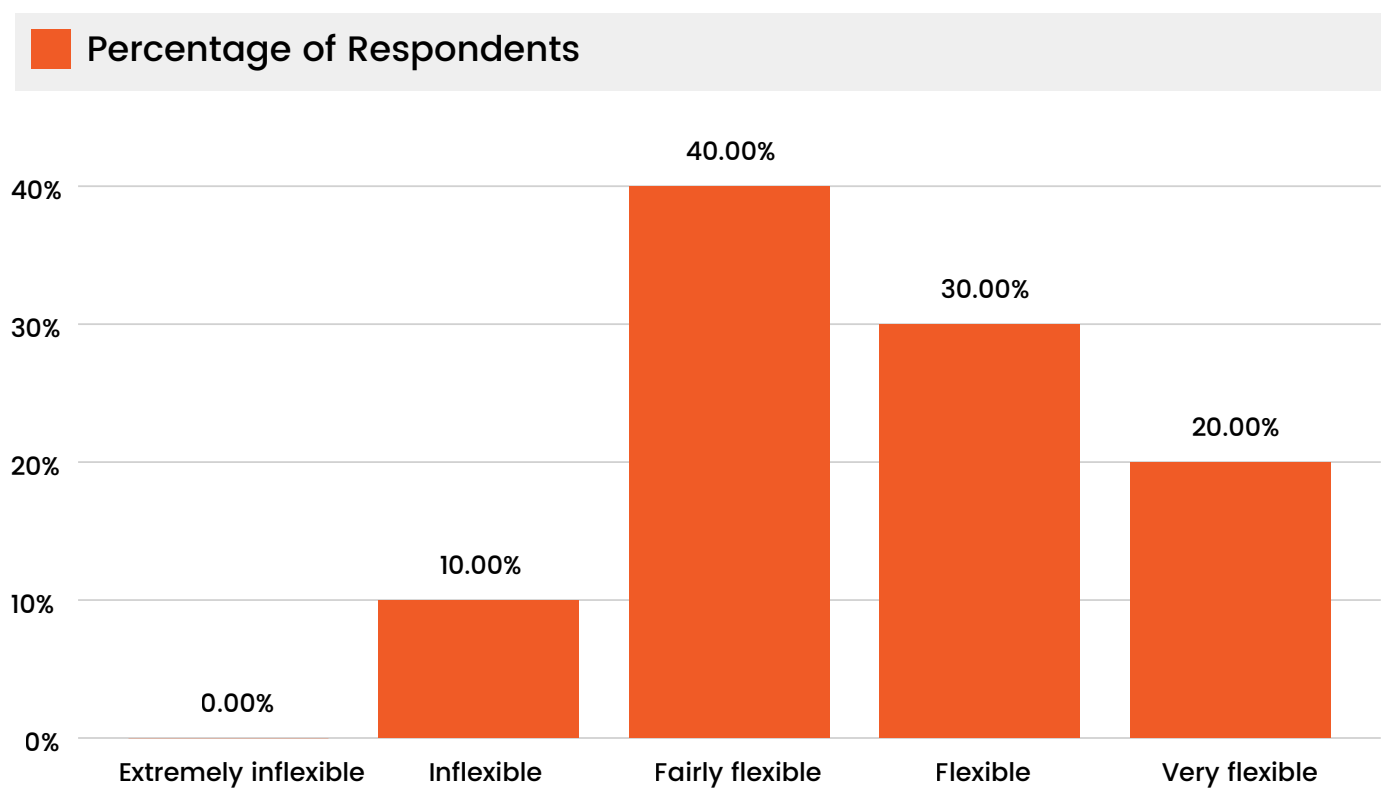
*Figure 8: Flexibility of Laws that Govern Movement of Money Across Borders*

Contrary to our finding on the existence of laws that restrict the movement of money across borders, only 53.33% of the organisations indicated knowledge of the existence of laws that restrict the movement of money within Malawi. This could be due to the fact that the Act which controls the movement of money is the Exchange rate control Act and perhaps many



associates it with the movement of money across borders.

Interestingly, only 10% of the organisations indicated that laws that restrict the movement of money within Malawi are inflexible (Figure 9) which shows that majority regard laws that govern the movement of money within Malawi as flexible compared to laws that restrict the movement of money across borders.



*Figure 9: Flexibility of Laws that Govern Movement of Money in Malawi*

The majority (73.33%) also indicated that the rates for sending money outside the country are higher compared to the rates of transferring the money within the country. Based on the survey 46.67% of organisations that responded felt that the rates for transferring money within Malawi were fair by 46.67% and 6.67% of organisations felt that they were low; against



20% and 6.67% respectively for transferring money outside the country. Nevertheless, 66.67% of the organisations indicated that they are able to retain the received grants in the currency of origin (i.e. USD, Euro, ZAR). For those who indicated that they cannot retain the received grants in the currency of origin, 60% mentioned that the funds are liquidated on arrival.

### 2.2.6 Supporting advocacy-focused work

On support towards advocacy-focused work, we found that 46.67% of the organisations believe there are laws that restrict supporting/funding advocacy-focused work but could not state how many. We also found that 40% of the organisations are not aware if such laws exist. In addition, one (1) organisation indicated that there are no such laws. Interestingly, one organisation mentioned the existence of one (1) law that restricts support/funding of advocacy-focused work (Figure 10).

#### Percentage of Respondents

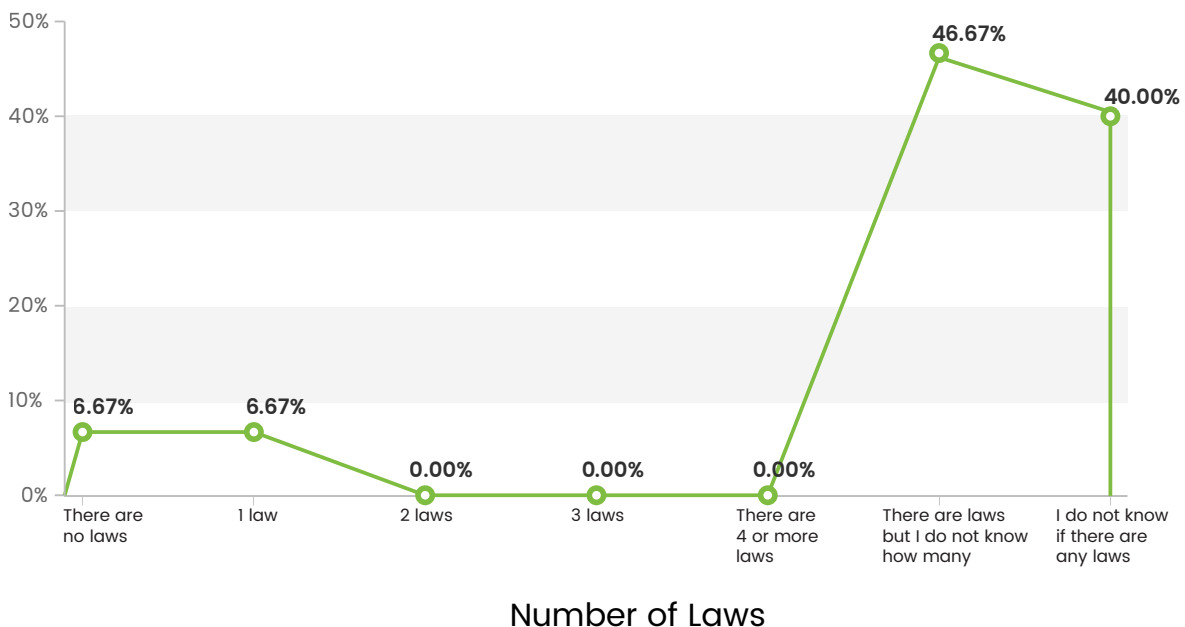


Figure 10: Knowledge of Laws that Affect Advocacy-Focused Work

## 3.0. DISCUSSIONS AND CONCLUSIONS

The findings of this study point to a number of key issues as far as philanthropy in Malawi is concerned. To begin with, the results highlight the presence of a well-established legal framework. It is apparent that in Malawi, the laws are clear on registering a philanthropic organisation and how such organisations should operate. The results show that, largely, organisations comply by registering with a regulatory body and submitting reports. However, the registration process is deemed costly by most organisations. Despite implementing various measures to minimize the cost by the government (including online registration), it is evident that most organisations are unaware of these developments. The results also show limited knowledge of the legal environment in which these organisations operate, a result that matches the findings by Nkonkomalimba (2022). Even though most of the sampled organisations had been operating for many years, their knowledge of the legal provisions proved limited. It is also clear from the results that there exist incentives to promote philanthropy, including a supportive legal and policy framework. The challenge remains the knowledge of the existence of such incentives. There are tax incentives (for philanthropic organisations and those contributing to philanthropy) as well as policy to remove barriers to philanthropy in Malawi. There are also policies that promote philanthropic work. The organisations, however, displayed varied knowledge of such incentives and policies. Despite the presence of policies that promote philanthropy, we found that there is no specific philanthropy promotion agency in Malawi. In addition, our findings highlight a potential area for improvement in the movement of money across borders. While it is clear from the results that the movement of money within Malawi is relatively cheaper, the movement of money across borders is expensive. This has the potential to affect the implementation of philanthropic activities by various stakeholders.



## 4.0. RECOMMENDATIONS

In light of the above observations, it is important that government and all other relevant stakeholders take deliberate action in sensitizing the public on philanthropy issues. Both existing and potential stakeholders in the philanthropy sector should be sensitized on the legal framework of Malawi as well as on existing incentives within the sector. Ministries (which are policyholders) should also implement awareness campaigns to promote knowledge of the policy framework that supports philanthropy. In addition, the promotion of philanthropy in Malawi can benefit from the institution of a specific philanthropy promotion agency which at the moment is not available in Malawi. It is also recommended that more be done to minimize the cost of registration and cost of operation, especially the movement of money across borders. Lastly, it is recommended that all stakeholders continue adhering to the regulatory body and ensure that their operations are not stopped for lack of compliance.

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## About SIVIO Institute

SIVIO Institute (SI) is an independent organisation focused on ensuring that citizens are at the centre of processes of socioeconomic 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