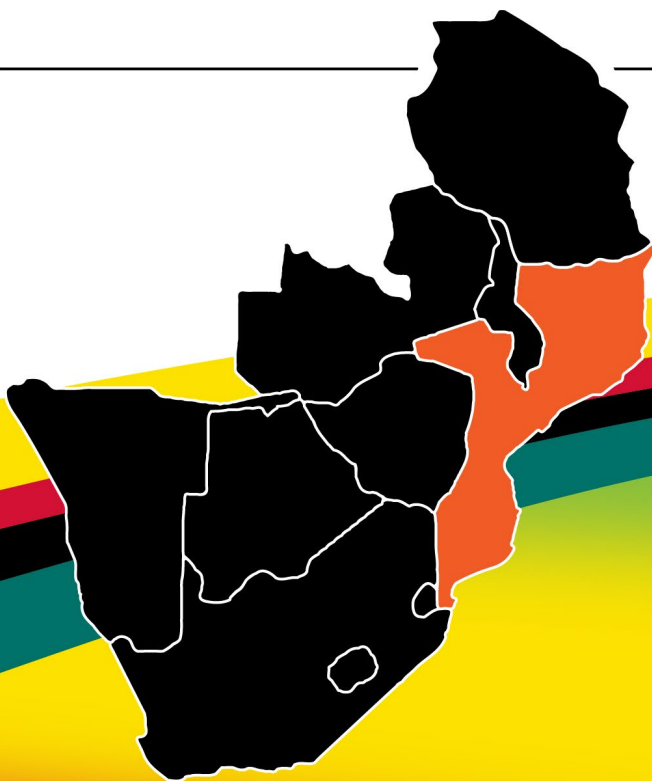


Understanding the Legal Framework for Philanthropy in Southern Africa



Mozambique Report

Raul Chambote

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EXECUTIVE SUMMARY

Philanthropy, which is about giving due to having a desire to improve the lives of those in need, can happen at the community or grassroots level all the way up to national and international levels. Many organisations engage in this noble cause in Mozambique, and the environment in which they operate is crucial for their success. This report seeks to understand how the legal environment in Mozambique impacts the successful implementation of philanthropic endeavours. This understanding can help to raise awareness of the challenges that practitioners encounter and also to help influence legal and policy frameworks for the creation of a better philanthropic environment.

This study incorporated desktop research which discovered 5 laws that govern the aspects of philanthropy under study, namely registration, government oversight and compliance, taxation regime and incentives, resource mobilisation and support of governance and human rights work. The second part involved an online survey administered to seven (7) organisations already registered and operating in Mozambique which sought to find out how much they knew about the laws in place and how these laws affected

them in their daily operations. Of these, 3 were religious organisations, and 2 were regranting organisations. There was one (1) charitable organisations and one (1) community organisation.

The size of the sample was small despite sending the survey link to many organisations operating in Mozambique. This could be due to the political turmoil in the North at the time of the research. Many organisations indicated they were not sure how the responses they gave would be used and feared they could be used for political reasons and, therefore, some requested personalised questions as opposed to the online version. This is understandable because in a time of war, trust is usually lost. That explains why only those respondents who knew the researcher or those referred by someone the respondents knew took part in the survey.

With such a small sample, it was very difficult to come up with generalised conclusions. However, the data collected gave insight into the philanthropic environment in Mozambique.

More respondents (57%) indicated that the process of putting together registration



requirements was hard compared to the 43% who felt that it was easy. Despite more people saying that the requirements were hard to put together, most of them (71%) still felt the registration process itself was generally efficient.

Philanthropy organisations are expected to comply with certain rules and regulations for them to remain registered. For example, 29% (2) of the organisations indicated that they were required to reregister. Six organisations (86%) indicated that there was a regulatory authority in Mozambique and half of them (3) submitted reports to this body.

Several laws speak into the taxation regime in Mozambique although some respondents did not think any laws existed. There are also tax exemptions for organisations and individuals who give to charity.

The main sources of funds for surveyed organisations were Membership and Official aid. This is not surprising because the largest numbers of surveyed organisations are religious organisations likely to get resources from their members followed by regrating organisations that are likely to receive money from Official aid. There seems, however, to be no legal framework guiding the movement of money within and across the borders of the country.

There is legislation that is yet to be debated in Parliament that is likely to impact the support for human rights work in Mozambique. It is premature to make any conclusions on the magnitude or nature of its impact at this moment.

In general, the legal environment in Mozambique is friendly to the operation of philanthropic work although intended changes to some of the laws are likely to change the atmosphere completely. The political upheavals in the North are also making it difficult for organisations to operate and for trust to be developed enough for the research to be meaningful.

It is recommended from the findings of this report that those who are making proposed changes to the law not make the changes to please or pacify the tense political situation but to make the work of the charity organisations easier and better. Large corporates that are mandated to give back to society under corporate social responsibility laws are encouraged to partner with organisations in their areas of operation so that their contributions are channelled to areas of greatest need. It would also help if the supervision of these projects were done by local authorities rather than the national structures since they may not be familiar with the local needs.



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Acronyms

CSO	Civil Society Organisation
INGO	International Non-Governmental Organisation
NGO	Non-Governmental Organisation



1.0 INTRODUCTION

1.1 Background to the study

In tradition, philanthropy is defined as “the activity of helping the poor, especially by giving them money.”¹ However, philanthropy does not strictly involve money, and it can also be attributed to charity, private foundations or non-profits’ donations in response to human needs: poverty, health, education, safety or human rights. Therefore, in this paper, philanthropy is defined as “the effort that an individual or an organisation undertakes based on an altruistic desire to improve human welfare” (Hayes).² It takes place from the very basic level in the community to the upper levels whose boundaries cannot be clearly defined. While it regularly takes place in small communities, current trends move it to the international level, involving non-profits in general, though not all non-profits are meant to be essentially philanthropic in practice. However, current development practice makes philanthropic organisations flexible and key actors for certain areas of intervention, such as education, health, and emergencies like natural disasters, among others. Philanthropic initiatives can be started by individual and family foundations, charities, community-led initiatives, or religious organisations, among other actors.

This paper is based on a study of the philanthropy environment in Mozambique, as part of the bigger project assessing the ease of practising philanthropy in Southern Africa. This report gives an account of the operating environment for philanthropy which the audience may use to see how countries are advancing. The study aspires to influence policies that promote the practice of philanthropy stemming from what is currently in place and influence best practices in the region.

1 Dictionary of Cambridge, accessed on November 30, 2022, from <https://dictionary.cambridge.org/dictionary/english/philanthropy>

2 Ibid



1.2 Purpose and objective of the study

The study aims at assessing the operating environment for philanthropy organisations and associated practices in Mozambique as part of the bigger regional work. Specifically, the objectives of the study are:

- To identify and assess how existing laws and public policies impact practices of giving,
- To raise awareness of the challenges confronting the philanthropy sector, and
- To influence legal and policy reforms for an improved philanthropy environment.

1.3 Research Methodology

This country report results from firstly secondary data collection where a desktop review of the legislation in place that affects philanthropic work was done. Primary data was then collected through an online survey tool (Survey Monkey) where a questionnaire was developed and disseminated to decision makers in organisations already in the practice.

Some organisations did not consider themselves as philanthropic and, so did not respond accordingly. Others, for several other reasons, did not respond to the request through the shared link, and therefore, the survey responses were limited. The study was framed around six thematic areas thought to be vital for assessing the philanthropy environment. These are (i) Ease of registration, (ii) State oversight and compliance to remain registered, (iii) Taxation regime and giving (iv) Resource mobilisation and movement of funds, (v) Incentives to promote giving as part of national development and (vi) Supporting governance and human rights-focused work

Therefore, the report gives an account of the philanthropy environment in Mozambique based on the perceptions survey and the enacted laws that affect philanthropy in the country. Some variables appear to be strongly related, and some are interdependent.



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

An assessment of the laws that either inhibit or promote philanthropy in Mozambique was done following the six thematic areas highlighted above. A total of five (5) laws were found to have a bearing on philanthropy in Mozambique. It is important to note that the assessed legislation comes from the early 1990s in response to the transition from a one-party state to pluralism. At the point of writing, Mozambique was going through political turmoil in some provinces. This explains the limited number of responses to the online survey.

2.1 Ease of registration

The registration process of philanthropy organisations in Mozambique is based on the Lei no 8/91 de 18 de Junho (Law nr. 9/91 of June 18), well under the transition to democracy and the end of the civil war. The law is clear in its intended objective, which is to define the national entity that shall be responsible for the registration of non-profits. It clearly delegates the registration process to the Ministry of Justice at the national level, and the Governor, at the provincial level. However, it does not specify the entity



that registers small non-profits, below the provincial level, so it can simply be presumed that for registration, small non-profits need to go up to the provincial level to register. Also, it does not mention how existing non-profits should proceed, so in that sense, it can be presumed that they do not need to go through that process as they had been already operating.

From the previous assumption, there are a number of international philanthropic organisations which were created long before the approval of the Law (Lei no 8/91 de 18 de Junho), which also needed not to go through subsequent legislation approved in 1998. The Decree Nr. 55/98 (Decreto nr. 55/98 de 13 de Outubro) was designed specifically for International (Foreign) Non-Governmental Organisations (NGOs) and Article 5 attributes the power of NGO authorisation to the Ministry of Foreign Affairs and Cooperation. In this sense, the process of registration seems to be flexible.

2.2 State oversight and compliance to remain registered

The Law (Lei no 8/91 de 18 de Junho) determines the legal framework that authorises the objectives and operational mechanisms, including the way that Mozambican philanthropies could extrapolate their interventions abroad. The Decree (Decreto-Lei no 55/98), on the other hand, is limited to INGOs willing to intervene in Mozambique. As stated in the Decree, Article 1, INGOs "...can be associations, foundations or other collectives seeking the same non-lucrative ends of cooperation for social and economic development." The Decreto-Lei no 55/98 and the Revision of the Law on Non-profit Organisations Intervention and Procedures have provisions for organisations to remain compliant, for example, the requirements for submission of annual reports under the Decreto-Lei no 55/98.

2.3 Taxation regime and giving

Taxation regime and giving fall under the legislation (Lei no 8/91 de 18 de Julho). Article 11 - Tax Exemptions, Fees and Other Benefits, states that "the Council of Ministers has the mandate to establish tax and fee exemptions, as well as other benefits granted to associations declared to be of public utility".

2.4 Resource mobilisation and movement of funds

From the preliminary evaluation of the legislation we have collected, the main legislation for philanthropic interventions is unclear. Lei no 8/91 de 18 de Julho does not clearly address resource mobilisation, restricting it to Civil Society Organisations (CSOs) as a way of exercising freedom of association and expression, therefore, it may be assumed that philanthropy operates under common law. For purposes of this research, the law under revision was not included since it is still a proposal and would mislead respondents or researchers most of whom take it for granted that it is more of a threat than an incentive.

2.5 Supporting governance and human rights-focused work

Current legislation reveals a significant level of support for philanthropic organisations in Mozambique. However, the revision that is taking place of the Lei no 8/91 de 18 de Julho is controversial and raises uncertainty. The proposal has been submitted to the Parliament to amend Lei no 8/91 de 18 de Julho, however, conclusions would be premature. In addition to heated discussions, on the one hand, violent extremism in Northern Mozambique may affect legislation, but on the other hand, it is unclear which type of organisations would be most affected (charities, community foundations, corporate foundations, regrating organisations, or religious organisations).



3.0 KEY FINDINGS FROM THE SURVEY

3.1 Sample size description

Seven (7) organisations responded to the survey. The table below shows that the highest number that responded were religious organisations (n=3), followed by regranting organisations with two (2) respondents, while one (1) charity organisation and one (1) community organisation completed the list. No corporate foundations were part of the sample that responded to the survey. Though the survey link was shared with organisations all over the country and followed up through phone call reminders, the expected number of respondents (15) was not met, therefore, conclusions are carefully not generalised; however, the findings do provide insights into the philanthropy space in Mozambique.

The limited responses to the survey could be a result of several reasons which may include the following. It was observed that the few respondents are all based in Maputo, except one (1) with operations in Tete. Organisations that participated were respondents who knew the researcher personally or those that the researcher had been referred to. Some of the organisations approached did not participate due to a lack of confidence in the purpose of the research. Some respondents requested in-person interviews suspecting that the information could be used for supporting the current political instability and terrorism in Northern Mozambique. This was revealed in follow-up calls made to targeted organisations that had been sent the link.

Table 1: Type of organisation

Type	%	#
Regranting organisation	28.57%	2
Charity organisation	14.29%	1
Community foundation	14.29%	1
Religious organisation	42.86%	3
Corporate foundation	0%	0
Total		7

All the organisations that responded had been in existence for 10 years or more (see Table 2 below). Most of the entities (n=6, 86%) indicated that they received their funding from membership subscriptions; with official aid (e.g., EU, USAID, etc.) being the second biggest source of funding for the organisations profiled (n= 5, 71%). All the organisations were legally registered.



Table 2: Type of organisation & years of existence

Type of Organisation	Less than 1 year	1-3 years	4-6 years	7-9 years	10 and more years	Total
Community Foundation	0	0	0	0	1	1
Charity Organisation	0	0	0	0	1	1
Religious Organisation	0	0	0	0	3	3
Corporate Foundation	0	0	0	0	0	0
Regranting Organisation	0	0	0	0	2	2
Total	0	0	0	0	7	7

3.2 Ease of registration

With regards to the legal frameworks guiding the registration of philanthropic entities all the organisations that responded to the survey, except one (1), indicated that there were laws governing the registration of philanthropy organisations in the country. Of the six (6) that indicated that there were laws only one (1) indicated that they did not know the number of laws.

When it came to ease of registration, four (4) of the seven (7) respondents felt that the registration requirements were very difficult. Three (3) organisations felt that the registration process was somewhat easy or easy. Despite the view that the registration requirements were difficult, when asked about the registration process itself, most of the respondents (n=5) felt that it was efficient to fairly efficient.

Table 3: Ease and efficiency of registration

Efficiency	Very difficult	Difficult	Somewhat easy	Easy	Very easy	Total
Very inefficient	0	1	0	0	0	1
Inefficient	0	1	0	0	0	1
Fairly efficient	0	1	1	1	0	3
Efficient	0	1	1	0	0	2
Very efficient	0	0	0	0	0	0
Total	0	4	2	1	0	7

Three (3) of the seven respondents (43%) indicated that they only had to provide between 1 to 3 documents as part of their registration process; while two (2) indicated that they had to provide 10 or more documents.

Table 4: Ease of acquiring registration documents

Very difficult	Difficult	Somewhat easy	Easy	Very easy	Total Respondents
0%	57.14%	28.57%	14.29%	0%	7
0	4	2	1	0	

The general perception of most respondents (57%) was that it was difficult to get the documents required for the application for the registration of their organisations.

Table 5: Registration process – efficiency vs time to register

Efficiency	Less than 1 month	1 month to 2 months	3 months to 6 months	More than 6 months	Total
Very inefficient	0.00%	14.29%	0.00%	0.00%	14.29%
Inefficient	0.00%	0.00%	14.29%	0.00%	14.29%
Fairly efficient	14.29%	14.29%	14.29%	0.00%	42.86%
Efficient	0.00%	0.00%	0.00%	28.57%	28.57%
Very efficient	0.00%	0.00%	0.00%	0.00%	0.00%
Total	14.29%	28.57%	28.57%	28.57%	100.00%

While three (3) organisations indicated that the registration process was fairly efficient, the same organisations indicated that it took 6 months or less for their registration to be approved. The organisations that felt that the registration process was ‘efficient’ (29%) indicated that it had taken them more than 6 months to register their entities. Six of the seven indicated that the registration process was decentralised and that it could be done at the local authority offices.



3.3 State oversight and compliance to remain registered

It was only 2 (29%) of the 7 surveyed entities who indicated that their organisation's registration required renewal. Six of the organisations in the survey also indicated that there was a regulatory body for philanthropy organisations in Mozambique. Three (3) of these organisations indicated that they submitted reports to this body while the other three (3) indicated that they did not submit reports.

While respondents do submit reports, the question referred to the submission of reports to a regulatory body of the organisation and not to donors. It can be suspected that some of the respondents misread the question to read that reports were supposed to be submitted to donors, which is a regular requirement for grants. Hence, the trend may be misleading for conclusions as reports are often submitted to the “source of funding”.

3.4 Taxation regime and giving

With regard to taxation and tax benefits, the perceptions of the organisations that completed the survey tended to be varied.

All the organisations indicated that there were tax-related laws governing giving in Mozambique. Most (43%) knew of one (1) law; while there was a fair number (29%) who knew of laws but did not know how many there were.

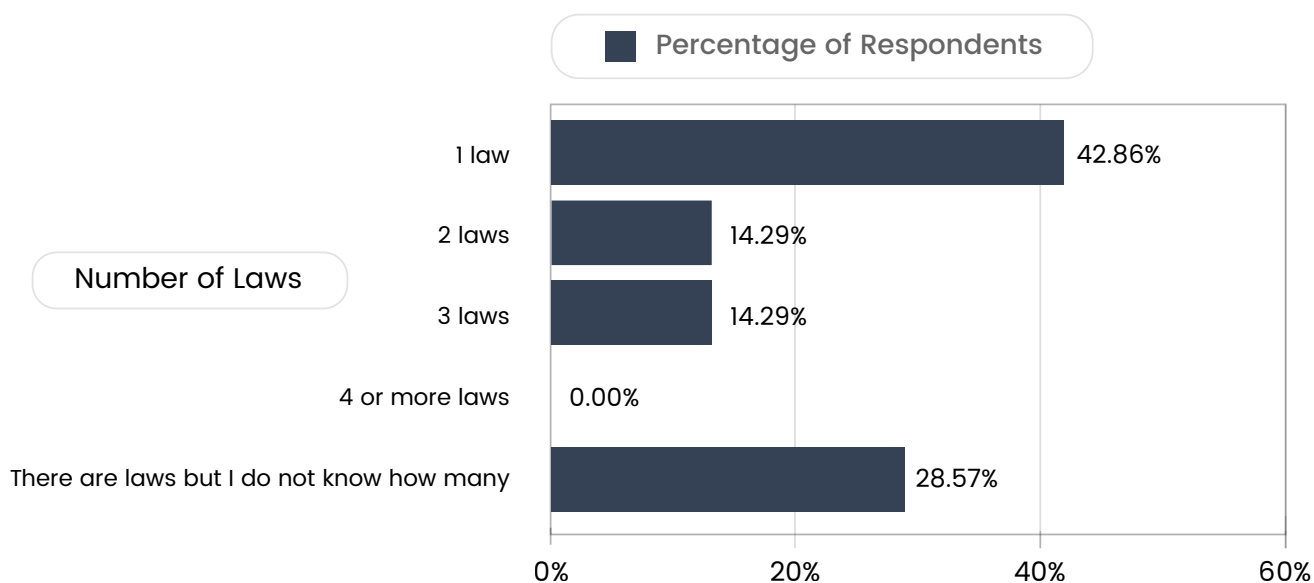


Figure 1: Tax-related laws governing giving

When it came to incentives for those who give, 3 (43%) of the respondents indicated that there are tax benefits to individuals and corporates giving to philanthropy organisations. The benefits included exemptions on donations to a certain limit and tax exemption on capital gains.

Table 6: Tax benefits for individuals or corporates that give

Tax Benefits	%	#
Tax relief on gross income	28.57%	0
Tax exemption on donations to a certain limit	14.29%	2
Deduction on Income Tax	14.29%	0
Tax Exemption on Capital Gains	42.86%	1
Other	0%	1

3.5 Resource mobilisation and movement of funds

The desktop review does not offer clear legislation on resource mobilisation and the movement of funds for philanthropic organisations. Lei no 8/91 de 18 de Julho does not state resource mobilisation policies, tending to restrict it to Civil Society Organisations (CSOs). However, survey data results reveal that membership contributions and official aid are the main sources followed by individual donations. Though it is unclear from the survey, due to the number of respondents, it suggests that religious organisations and regranting organisations are probably the ones getting resources from their members and official donors respectively.

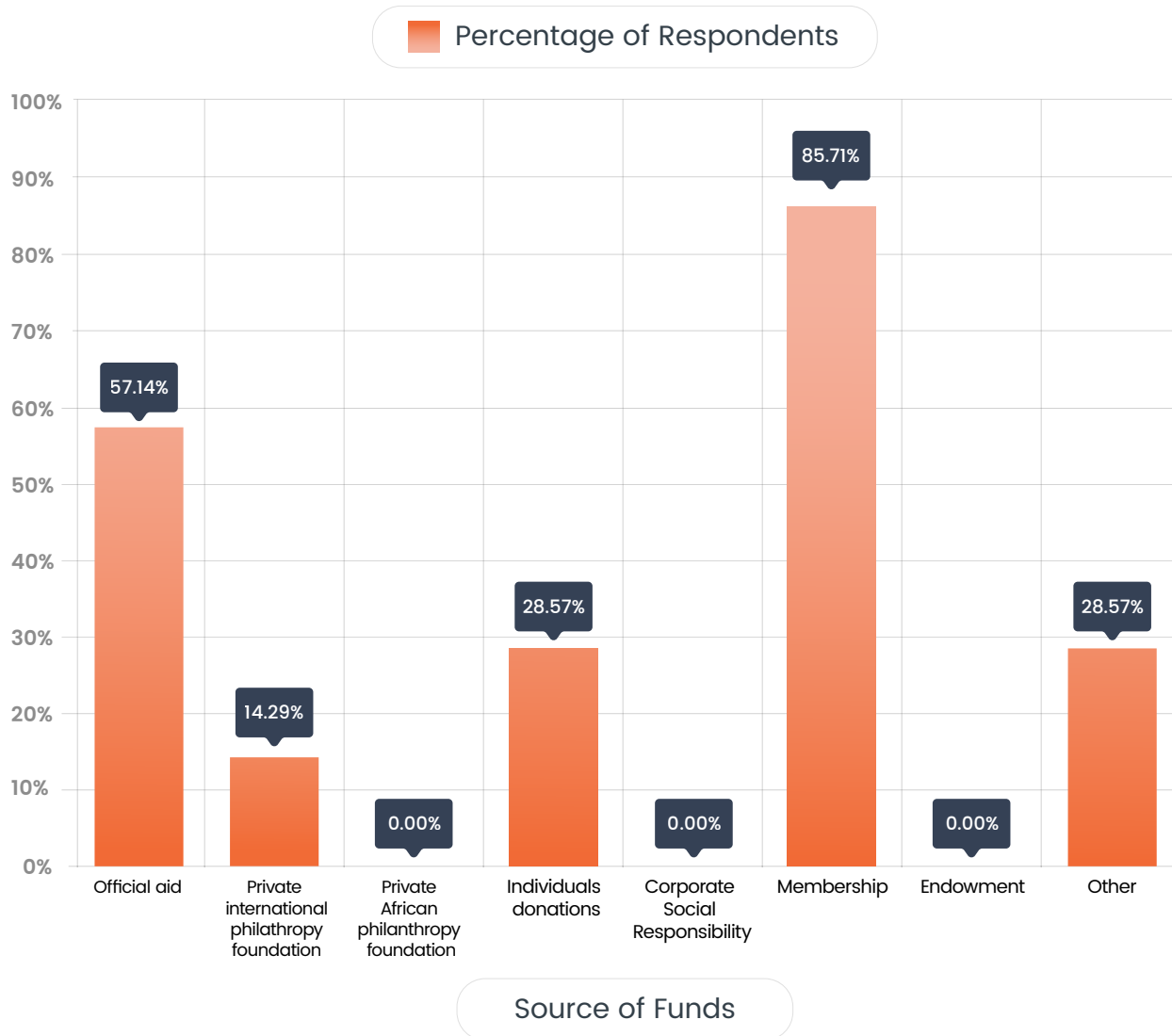


Figure 2: Sources of funding

Though Figure 2 reveals membership to be the main source of funding, in the end, how each organisation moves their funds is not clear, especially when funds come from official aid entities. Usually, terms of agreement tend to require stronger accountability in that case compared to the members or to the board of the philanthropic organisation.

3.6 Supporting advocacy-focused work

There is an ongoing debate that is taking place in Mozambique as the government has recently approved and submitted a proposal to the Parliament willing to amend the legislation on how non-profits should operate, including accountability before the government. However, CSOs mainly argue that the new legislation threatens and limits their intervention while some clauses are being

judged to be unconstitutional.³ While this was not a role suggested to the researcher, we found it necessary to mention it as it may be reflected in survey responses. It is also argued that the government is willing to control them and limit the space for democratic processes in Mozambique,⁴ however, conclusions are still debatable until the approval of the legislation in Parliament. As a result, the ease of supporting political and civil rights cannot be evaluated as the legislation is currently under review. The proposal designed by the Government of Mozambique has been submitted to the Parliament (Assembleia da República) and, while the debate over it was scheduled for the last session of 2022, it has been postponed to the First Session of 2023.

With regards to the current legislative environment, 43% (3) of the respondents did not know if there were any laws that restricted their ability to support or fund advocacy-focused work. Two (29%) of organisations said that there were no laws while one (14%) organisation said there was one (1) law, and another (14%) said that there were laws, but they did not know how many were in place.

Table 7: Number of laws that restrict supporting/funding advocacy-focused work

Number of Laws	%	#
There are no laws	28.57%	2
1 law	14.29%	1
2 laws	0%	0
3 laws	0%	0
There are 4 or more laws	0%	0
There are laws but I do not know how many	14.29%	1
I do not know if there are any laws	42.86%	3
Total		7

3 Ericino de Salema & Associados – Sociedade de Advogados, 'Proposta da Lei das Organizações Sem Fins Lucrativos: Protótipo de Recuo Democrático', September 29, 2022, accessed on December 27, 2022 from <https://www.cartamz.com/~cartamzc/index.php/politica/item/11961-proposta-da-lei-das-organizacoes-sem-fins-lucrativos-prototipo-de-recuo-democratico-que-urge-sanar-escreve-ericino-de-salema>

4 Ibid.



4.0 CONCLUSIONS

Through a desktop review and collected quantitative data, this work assessed the legal framework for philanthropy in Southern Africa, in general, and Mozambique in particular, for a better understanding of current trends with the intention to find ways of enhancing the practice. While the desktop review reveals a favourable environment for philanthropic intervention in Mozambique and the role it plays in people's lives, especially vulnerable groups, collected quantitative data does not support the same understanding. Collected data reveals that practitioners have a limited understanding of the legal framework in place for their intervention. Though the survey had a limited number of respondents, it can be argued that the current legal framework is favourable for philanthropic intervention. However, the ongoing discussion over the amendment of the current legal framework suggests a limited political environment for philanthropy. The survey shows that the registration process is flexible and, once registered, there is no need for established philanthropic organisations to reregister. The legal framework has been designed in a way that philanthropies benefit from tax exemption, for example, the municipal property tax. The survey also leads to the conclusion that there are no legal restrictions for advocacy-focused work.

Philanthropies are supposed to promote the welfare of vulnerable groups and so contribute to national development. Resource mobilisation can be considered flexible as philanthropies can raise funds from membership and private or public donations either from national or international entities. The survey shows that, though foreign development agencies or official aid are usual funders, membership and individual contributions are fundamental. Nevertheless, further desktop review reveals that the concept of philanthropy does not fully apply to this practice (see *legislation*)⁵. The legal

5 BR No 9 de 16.01.17, Boletim da República – I Série, pag. 99, accessed on December 18, 2022 from <https://www.inm.gov.mz/pt-br/content/minist%C3%A9rio-dos-recursos-minerais-e-energia-br-n%C2%BA-9-de-160117-bole-tim-da-rep%C3%BAblica-i-serie>

framework in Mozambique puts into question corporate foundations as philanthropies as long as private corporations, especially those investing in natural resources (oil and gas, forestry, mining), contribute to local development under the legal concept of corporate social responsibility. Their giving is definitely not a spontaneous contribution as expected from the definition of philanthropy. They are actually expected by policy to do so. From this point of view, the concept of incentives to promote giving as part of national development clearly does not apply. Those involved seem to contribute in the context of the welfare state. This may be the reason why no corporate foundation responded to the survey.

Only a few organisations responded to the survey which makes it difficult to come up with general conclusions. There are a number of reasons for this. Political reasons were highlighted as one limitation for participation in the survey. The very few respondents were based in Maputo, except one from Tete. One of the reasons some philanthropies did not participate has to do with a lack of confidence in the purpose of the research. Some respondents requested in-person interviews, instead of the online version, suspecting that the information could be used for supporting political instability and terrorism in Northern Mozambique. This was clearly mentioned in follow-up calls in Maputo or Cabo Delgado. Respondents were not hesitant if contacted in person by a known person, but others requested in-person participation⁶.

6 This requirement would not apply for the pre-defined data collection method and would be costly.



5.0 RECOMMENDATIONS

As the ongoing revision of the Lei no 8/91 de 18 de Julho is taking place under a politically sensitive period, and the CSOs have been resisting this revision, it can be expected that the law does not open a terrain for a favourable environment for philanthropy to thrive in Mozambique. While some progress had been built in the early 1990s under a period of hard political transformation, the intended amendment could make use of some democratic progress and constrain civil society contests as a contribution to the society instead of political interests.

As the content of the draft proposal cannot be taken for granted - more than a full revision - it could be an amendment of traits that had been determined without an open discussion before the establishment of multiparty democracy. For instance, it could clearly address resource mobilisation and look at philanthropy as an actual pillar of democracy and as a way of exercising freedom of association and expression.

While the current legislation for large private investments, especially in the oil and gas sector under the principles and policy of corporate social responsibility, is a favourable terrain for philanthropy to thrive in remote areas where neither the state nor well-established philanthropic organisations are operating. Besides, instead of giving the State the supervision role, civil society, local associations, or other philanthropic agencies should be encouraged to build partnerships under the social responsibility ideal. Firms operating in remote areas could increment philanthropic development under the middle class.

In the end, and in general, the political environment is less favourable to philanthropic exercise, especially in areas that are sensitive to politics. The legislature seems to be under political pressure and there is a risk of passing laws with shortcomings. The amendment would alleviate the pressure from well-established CSOs which are thriving to keep open space for freedom and democratic principles that are not implemented for political gains. Common law could be maintained for religious and less vibrant philanthropies.

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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 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