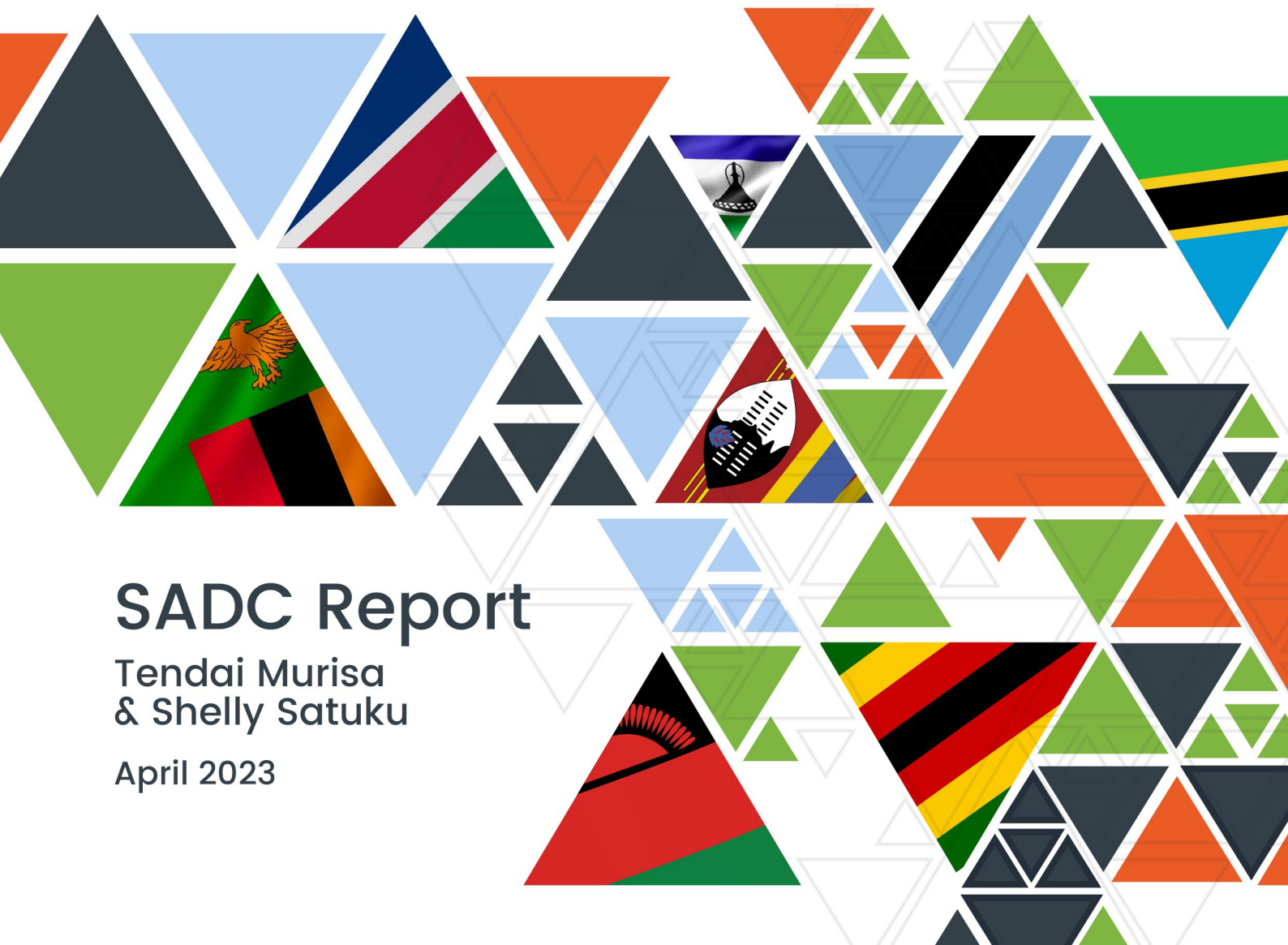


Examining Legal Constraints to Giving in Southern Africa



SADC Report

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EXECUTIVE SUMMARY

In as much as giving has been part of the African culture for ages, current trends, in as far as philanthropy in Southern Africa is concerned, indicate that not every country has a legal framework that encourages local people to give for the benefit of those less privileged in society. Starting with a hypothesis that a country and a region that has a legal framework that has little red tape when it comes to registration and operation of philanthropy organisations and incentives for those who give is one where philanthropy will thrive, this report summarises the findings from the studies of ten countries from Southern Africa. There have been studies to look at laws in different countries in Southern Africa, but a few have focussed on their impact on philanthropy. Evidence on the ground also indicates that some laws governing the movement of money across borders for reasons such as to curb money laundering may have been hampering cross-border philanthropic flows. Therefore this report assesses the laws in place and provides recommendations that countries can consider implementing in order to promote an enabling environment for philanthropy and ensure the work of philanthropic organisations becomes more impactful.

Despite evidence from research on the positive impact of philanthropic organisations on the lives of the less privileged, there is still no country with a philanthropy strategy in the sub-region. In fact, some of the laws in place seem to work hard to hinder the civil society space where the philanthropy sector is a subset.



The role of philanthropy organisations seems to bring distress to some governments since their efforts tend to address issues to do with the well-being of underprivileged individuals and societies holistically. The involvement of CSOs in issues that pertain to human rights and democracy have made some governments uncomfortable, and some of them are now working hard to make laws that prohibit the participation of civic organisations in these matters. Unfortunately, democracy and inclusive development suffer in the process of the continued shrinking of civic space. With the FATF's increased efforts to fight money laundering and sponsorship of terrorism, some governments have taken advantage to scrutinise sources of funding for philanthropists and blocking those organisations that they accuse of 'supporting the opposition politics agenda', which has affected the ease of flow of financial resources especially across borders.

This study focused on the assessment of the legal operating environment for philanthropy framed around six thematic areas which are (i) ease of registration, (ii) compliance processes and procedures, (iii) tax regimes, (iv) examination of existing incentives to promote growth and role of philanthropy in national development, (v) analysis of processes in place for the movement of financial resources within and across borders and (vi) ease of supporting political and civil rights focused work.

It also sought to produce the *Ease of Doing Philanthropy Index* which gives the overall picture of the philanthropy legal environment in SADC. The key used is 1 = Very difficult, 2 = Difficult, 3 = Somewhat Easy, 4 = Easy and 5 = Very easy.

Looking at the legal environment in Southern Africa, the study found at least seventy-five (75) laws that affected the operation of philanthropic organisations across the ten countries. The country with laws that make it easiest to do philanthropy work in it is Malawi with an average index score of 3.75. It also had the greatest number of laws that affect the area of philanthropy (13). Mozambique and Zimbabwe were the hardest countries to do philanthropic work in, with average scores of 2.42 and 2.5 respectively.

Issues to do with registration varied from country to country with most practitioners rating the process as being fairly easy. The duration of registration depended mainly on the laws in the country and the type of organisation being registered. Some generally took less time than others. Only two countries (Zimbabwe and Malawi) had more people indicating that the cost of registration was high, otherwise, practitioners felt that it was reasonable. The research also revealed that the registration

processes have not yet been fully decentralised in most countries. Pertaining to the renewal of registration, practitioners in most countries indicated that it was a requirement for them to renew their registration, with annual registration being popular. Tanzania was unique in that most of the organisations that responded (67%) indicated that they renewed after 10 years. In most instances, renewal of registration is part of state oversight on organisations and to ensure organisations are compliant. The research showed that there are at least twenty-two (22) laws that regulate compliance and government oversight of organisations across the region. Some countries have stricter laws than others as can be expected.

With most philanthropic organisations relying on funding from across borders, laws that govern the movement of money, especially across borders, have a huge bearing on how successful philanthropic endeavours become. Laws in place for the movement of money were judged by the majority (56%) to be fairly flexible but the transfer rates were perceived to be very high by 64% of the respondents. The good news is that most of the respondents (71%) can retain the grants they receive in the currency of origin, with a few countries insisting that the money be converted to local currency before it can be used in the country. Movement of money within the country was considered much easier with more friendly laws and charges.

Most of the organisations surveyed (66%) indicated that there was a tax code in their countries. There were exemptions and reduced tax rates for philanthropic organisations with VAT and Customs Duty receiving the most exemptions at 46% each. When each tax regime was analysed, it was noted that the regime with most people indicating they paid the highest rates of above 20% was PAYE with 33% of the respondents. Income tax followed closely with 21% of respondents indicating they paid at rates of 20% and above.

Currently, no surveyed country has a designated philanthropy body as in the case of Rwanda, but they have various ministerial bodies and boards that act as regulatory bodies to which philanthropic organisations report. On the contrary, most organisations (59%) indicated that there was such a designated body in their country, probably mistaking the discussed regulatory bodies for the philanthropic regulatory body in question. Also, most of the respondents (82%) indicated that there is no specific philanthropy promotional agency in their countries against 18% who thought there was. Analysis of laws in existence also shows that there is no country with a specific policy that addresses philanthropy although some countries have put in place measures to encourage giving in



response to disasters and health pandemics like Covid-19.

In as much as philanthropy among other structures is thought to contribute towards national development, hence the perceived need to promote it at a national and regional level, the survey revealed that for the majority (54%), there is no tax benefit to individuals and organisations who donate to charity.

One of the areas that are becoming a serious bone of contention between philanthropic organisations and governments is the area of governance and politically focused work as well as support for human rights work. Majority of the respondents (77%) showed a lack of knowledge pertaining to laws that govern this sensitive area. Analysis of the laws in existence revealed that there are not many laws, if any, in existence though those organisations who operate in these areas are often put under surveillance. Unlike many countries that are silent in this area, South Africa has laws that encourage participation in this area.

Considering the above findings, it is recommended that there be a more coherent framework of laws to nurture and grow the philanthropic sector in the Southern African region. The SADC Secretariat may start by investing in consultative processes with the emergent high net worth led philanthropy foundations among other stakeholders to develop guidelines for a national philanthropy framework which can then be tested and used in different countries. The framework may focus on establishing standards and best practices for philanthropic organisations in the region.



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Acronyms

CSO	Civil Society Organisation
FATF	Financial Action Task Force
LGBTQI	Lesbian, Gay, Bi-sexual, Transgender, Queer, Intersex
HNWI	High-Net-Worth Individual
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
PAYE	Pay-As-You-Earn
PBO	Public Benefit Organisation
SADC	Southern African Development Community
VAT	Value Added Tax



1.0 Introduction

Southern Africa, like the rest of the continent is currently seized with the question of how to achieve equitable socio-economic transformation. The most preferred approaches include attracting foreign direct investment and where possible, resuscitating industries. There is limited discussion on how gaps currently not funded by the government or the market such as improved access to high quality education, health and general social welfare support for low-income groups will be funded.

Furthermore, there is limited understanding of how resources mobilised from locals either within the country or the diaspora could be better organised for optimal utilisation to address existing challenges. There is an underlying hypothesis which suggests that increased giving by locals promotes a sense of agency/ownership amongst Africans. The current scenario, where Africa's transformation is discussed and determined in foreign capitals may, if not adequately tampered with, continue the process of dependency on foreign support.

In this report we provide an overview analysis of how the legal environment affects philanthropy. Our initial hypothesis is that philanthropy thrives in a nation or region where there is a conducive legal framework that supports and nurtures the practice of giving, by reducing bureaucratic red tape in the registration and operations of philanthropy organisations and providing incentives for giving such as tax exemptions



or breaks. Existing analysis on shifts within the legal environments have rarely probed into how philanthropy has been affected. Furthermore, there is no coherent approach to promoting philanthropy within the SADC sub-region. Instead, the sub-region is subject to several measures aimed at limiting or inhibiting the free movement of financial resources from one country to the other, closing off the civic space through punitive laws which make it difficult to operate as part of a broader civil society. The report provides an assessment of the philanthropy legal environment in the region and makes recommendations that countries in the region can consider implementing in order to develop an enabling environment. The report is based on findings from the ten-country study carried out in 2022 and 2023. The findings from the survey have also been further analysed to inform the first ease of doing philanthropy index focused on Southern Africa.

1.1 Background

Globally, there is a growing appetite to consider philanthropy¹ in its various forms as a potential strategy for inclusive transformation. However, the potential of philanthropy in contributing towards equitable development in the southern African region remains unexplored. There is very limited information on how Southern Africans are engaged in acts of philanthropy except for a few high-profile cases such as acts of giving by High-Net-Worth Individuals (HNWIs). The role and place of citizens engaged in philanthropy, whether formally or informally, has not been adequately understood or analysed. In other instances, giving has been reduced to what corporates do as part of their social responsibilities. Philanthropy as a sector remains highly underdeveloped and most of the formal and traceable giving tends to be from external institutions.

Related to the above, there has been limited deliberate planning on the need for a coherent institutional framework to support the nascent but growing field of philanthropy. There is no country with a strategy to promote philanthropy within the sub-region. The laws in place have mostly served to inhibit or make it difficult to navigate a complex web of procedure and institutional arrangements in the establishment and

1 The Oxford dictionary describes philanthropy as the desire to promote the welfare of others, expressed especially by the generous donation of money to good causes.

operations of philanthropy-oriented organisations. In many instances the philanthropy sub-sector is treated in the same way as broader civil society organisations. Most of the formal philanthropy organisations have been registered as trusts, companies limited by guarantees (otherwise known as non-profit companies) and some are just regular companies with no notable tax distinction.

Possibly Southern African governments have not caught on to the emerging catalytic agency for good in the form of philanthropy by Africa's middle class and HNWIs within and outside of the continent. Besides, the laws have also served to discourage the expansion of global philanthropy into the sub-region. Many of these global private philanthropy foundations have chosen South Africa as their operating base for the sub-region for logistical reasons but also to avoid the above-mentioned complex web of institutional arrangements. In the past, philanthropy entities like Ford Foundation and Open Society Initiatives for Southern Africa had a presence in places like Zimbabwe but they have since closed their offices.

The Philanthropy Circuit report of July 2022 acknowledges the fact that African philanthropy can contribute towards the achievement of a number of development goals. Murisa et al's (2022) study on community-based forms of philanthropy in Zimbabwe unearths the various roles that philanthropy plays in ameliorating livelihoods, securing social goods (education and health) for the under-privileged and improving coordination of humanitarian relief. Despite the widespread recognition of the role played by philanthropy organisations, there are growing concerns about the operating environment. Furthermore, the emergent organisations do not have adequate structures to engage with their governments. Some, especially foundations established by HNWIs, find it difficult to confront government. In many instances HNWIs have secured their wealth through government tenders or have to renew operating licences regularly. In such circumstances their preferred approach has been to avoid confrontation and instead, use negotiation where possible, given the fact that the latter is also a source of business revenue for the parent company. Broadly, questions on measures that must be taken to properly integrate policy and philanthropy remain to a greater extent unaddressed at a regional level.



1.2 Philanthropy and the law

The conduct of philanthropy is generally guided by laws within each jurisdiction. In the period prior to the growth of an African-led version of philanthropy, the sector was mostly consisting of foreign actors. In many African countries, private philanthropy foundations were able to work through a Memorandum of Agreement/Understanding with the host government. In some instances, these organisations were accorded diplomatic status. However, the growth of a governance focused sub-sector within civil society has led to a growing schism between the foundations and African governments. A number of African governments have raised concerns that private foundations promote 'foreign' ideas, which is a euphemism for the deepening of democracy and at times rights of minorities such as LGBTQI communities. The ongoing tensions are at odds with the romance that existed between African governments and private philanthropy foundations in the early years of independence. Unfortunately, the phenomenon commonly referred to as the growth of African philanthropy has occurred at a time when there is increasing suspicion of the broader civil society. In the process, laws around the formation of new entities have been tightened, the movement of money has also been restricted using legal fiat and as a result there are growing fears that governments are becoming more and more intrusive. African philanthropy has inadvertently been subjected to the same pressures commonly referred to as an increasingly shrinking civic space. Smidt (2018) postulates that governments are not only shrinking the space for civic activism, but also destroying the backbone of democracy and inclusive development, which philanthropy plays a role in. In most instances, subtle ways of restricting civil society's operating space involves enacting policies that curtail foreign funding for organisations and imposing cumbersome registration and compliance processes for civil society organisations (Smidt, 2018).

The Financial Action Task Force (FATF), a global money laundering and terrorist financing watchdog has provided a cover for the punitive legal framework that is emerging across the region. The FATF sets international standards that aim at preventing illegal financial activities and the harm they cause to society. The FATF has been calling for processes



and mechanisms that reduce the potential for money laundering and the financing of acts of terror. Many African governments have embraced the recommendations of the FATF as an opportunity to impose financial regulations that create demands for CSOs to reveal the source of their funding and curtail the ease of financial transactions across borders. The resultant laws hinder the operations of philanthropy organisations, especially as far as the movement of financial resources is concerned.

Despite the challenges listed above there are some islands of best practice to study. Nigeria, Rwanda and Liberia have taken steps towards actively integrating philanthropy in their development roadmaps. In the case of Rwanda, the Ministry of Finance and Economic Planning (MINECOFIN) commissioned work for the development of the Rwanda Philanthropy Partnerships and Outreach Strategy Report. The report made recommendations for the establishment of infrastructures for philanthropy as part of efforts to incorporate the sector in the country's developmental goals. It proposed structures like the Rwanda Foundation Centre, Rwanda Philanthropy Board, and the Rwanda Philanthropy Council while in the case of Liberia, the country already set up the Liberia Philanthropy Secretariat in 2009 (Moyo et al., n.d). These are typical examples of strides being made to nurture an enabling environment for philanthropy and promoting the sector towards a wider national development goal as well as making strides towards achieving the Sustainable Development Goals.





02

2.0 Research Methods and Data Analysis

The study was conducted between the period of June 2022 to January 2023 covering ten countries within the SADC region; Botswana, Eswatini, Lesotho, Namibia, Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe. The study made use of mixed research methods, where both primary and secondary data were gathered. It focused on the assessment of the legal operating environment for philanthropy framed around six thematic areas which are (i) ease of registration, (ii) compliance processes and procedures, (iii) tax regimes, (iv) examination of existing incentives to promote growth and role of philanthropy in national development, (v) analysis of processes in place for the movement of financial resources within and across borders and (vi) ease of supporting political and civil rights focused work.

Primary data on perceptions were analysed using Microsoft Excel. The study sought to produce the Ease of Doing Philanthropy Index which gives the overall picture of the philanthropy legal environment in SADC. The index showcases the overall score for the region and also includes the perception and objective indexes of the operating environment. These two indices informed the data collection methods and analysis thereof.

The Perception Index:

Primary data on perceptions of the operating environment was collected using a survey questionnaire targeted at decision makers and practitioners from philanthropy organisations across the ten SADC countries. Purposive sampling was employed where desktop research of philanthropic entities was done and a database of more than 300 organisations was established. A questionnaire was developed and administered online to collect responses from practitioners. The perceptions score was calculated across several defined variables grouped into the 6 thematic areas prior stated. A score was assigned to each classified question based on how the majority responded to the survey to give the country-wide perception of the environment. Each question was assessed on a 5-point scale with a 1 corresponding to answers that made it very difficult to a 5 meaning it is very easy.

The Objective Index:

Desktop research was carried out and secondary data analysis was done on the laws and policies that affect philanthropy organisations and their practices in the selected countries. The secondary data analysis of the laws was guided by the six thematic areas that were determined to have an effect on philanthropy. Researchers from the ten countries helped identify laws that impact philanthropy organisations and classified them within predetermined thematic clusters. A team of reviewers constituting of a legal expert, development practitioners and philanthropy specialists assessed the impact of the laws and policies gathered across the region. Each policy was reviewed to ensure that it made reference to and aligned with the existing laws. Some laws could be classified under multiple thematic areas. Each member of the team, after studying each of the identified laws assigned a score to it. This score was then discussed with other panellists to give a final objective score for each of the individual laws under discussion. Each thematic area was then scored according to the average of the law scores in that area. Classification according to the thematic area and scoring on a scale of 1-5 according to the ease of operating in the legal environment was carried out. The key used is 1 = Very difficult, 2 = Difficult, 3 = Somewhat Easy, 4 = Easy and 5 = Very easy. Therefore, the final objective index for each country is the average score across the 6 thematic areas. The perfect score across all thematic areas is 30 and the lowest possible is six.



2.1 Hypothesis

Our initial hypothesis is; the success of each sphere of economic and social activity is dependent upon the existence of a set of predictable, easy to understand and positive laws, institutions to implement the laws and adequate political will. Various laws affect the six critical dimensions of giving identified above as thematic areas. It is possible for a single law to affect more than one dimension under study.



3.0 Legal Environment for Philanthropy in SADC: An analysis of the laws and policies affecting philanthropy

From the study, we found seventy-five (75) laws that affect philanthropy across the ten countries. These were analysed according to how they affect the six thematic areas which are (i) ease of registration, (ii) compliance processes and procedures, (iii) tax regimes, (iv) examination of existing incentives to promote growth and role of philanthropy in national development, (v) analysis of processes in places for movement of financial resources within and across borders and (vi) ease of supporting political and civil rights focused work. From the methodology, the perfect score out of all the thematic areas is 30 where Malawi scored highest with 22.5/30. The scores were then divided by the number of thematic areas to arrive at the final average index score. Again the perfect average score for the index is 5.

Malawi also had the highest number of laws (13) and ranks the highest on the SADC Ease of Doing Philanthropy Index at 3.75 classified as a very easy environment². The

2 Ease of Doing Philanthropy Index (africanphilanthropy.org)



country makes provisions for the registration of the different types of philanthropy entities also providing various incentives for the growth of the sector and its contribution towards national development. Mozambique and Zimbabwe's environments were rated very difficult for philanthropy to thrive as they scored lowest of the ten countries at 2.42/5 and 2.5/5 respectively. The number of laws and policies that affect philanthropy operations in each of the two countries are five (Zimbabwe) and nine (Mozambique). In Zimbabwe for instance, the proposed PVO bill whose effects are being felt even before its enactment have countered a healthy score for the country as the bill affects three thematic areas around the ease of registration, compliance processes and procedures and the ease of supporting political and civil rights focused work.

Table 1: Overview of laws that affect philanthropy in 10 SADC countries

Country	Registration		Compliance		Tax		Incentives		Movement of Funds		Support of Advocacy		Total Unique Laws	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Botswana	1	20%	1	20%	1	20%	1	20%	2	40%	0	0%	5	7%
Eswatini	2	22%	1	11%	3	33%	0	0%	2	22%	2	22%	9	12%
Lesotho	1	25%	1	25%	1	25%	0	0%	2	50%	0	0%	4	5%
Malawi	4	31%	4	31%	2	15%	5	38%	2	15%	1	8%	13	17%
Mozambique	1	20%	1	20%	1	20%	0	0%	1	20%	1	20%	5	7%
Namibia	4	44%	4	44%	2	22%	0	0%	2	22%	1	11%	9	12%
South Africa	2	25%	1	13%	4	50%	0	0%	1	13%	2	25%	8	11%
Tanzania	4	80%	3	60%	1	20%	1	20%	1	20%	1	20%	5	7%
Zambia	4	40%	4	40%	1	10%	0	0%	3	30%	1	10%	10	13%
Zimbabwe	4	57%	2	29%	1	14%	0	0%	1	14%	1	14%	7	9%
Total	27	36%	22	29%	17	23%	7	9%	17	23%	10	13%	75	100%

Malawi has 5 laws that make provisions for incentives to support philanthropy's role in national development. The country provides four different laws that cater for the different forms of registration for philanthropy, and these are (i) Trustees Incorporation Act Cap 5:03 of the laws of Malawi (1962) ii) Handicapped Persons Act Cap 33:02 of the Laws of Malawi (1972) iii) Non-Governmental Organisation Act Cap 5:05 (2001) and iv) Companies Act 43:02 of the Laws of Malawi (2013). There are similar provisions

in Namibia, Tanzania and Zambia where different laws have been enacted to make provisions for the registration of philanthropy entities. In Zimbabwe, however, three laws are fully in place to guide registration while the other one is still a bill but whose provisions are somehow being implemented for registration, although at the point of writing the bill has not yet been enacted.

Regarding compliance processes and procedures, it was noted the majority of laws that govern registration also make provisions for state oversight of philanthropy organisations. Some compliance issues included for example, renewal of registration of certain philanthropy entities. In Namibia for example, if an organisation is dormant for two consecutive years without reporting their matter, they would be deregistered which seems fair for the country which scored 3.25/5 on the index. Some of the provisions under ease of supporting political and civil rights focused work are measures to ensure compliance of organisations. The study results show that 8 of 10 countries have laws that regulate support or advocacy governance or civil rights work. Two countries, Botswana and Lesotho do not specifically have laws that restrict support of the work. Zimbabwe does not have a law that restricts the work but the proposed bill again, has provisions that restrict support for political and civil rights focused work.

The recommendations of the Financial Action Task Force to avoid grey listing by adopting a number of compliance measures, have been used by governments to introduce oppressive laws on civil society organisations which in turn affects philanthropy entities. The movement of money across borders has become even more complicated. In many instances organisations are now required to state the source and purpose of funding.





4.0 Survey Findings: Perceptions of the operating environment

The link to the survey was shared with over 300 organisations across the 10 SADC countries and we received 140 responses. The survey sought to gather perceptions of practitioners in the philanthropy space. Practitioners were asked about their perceptions of the legal environment within their country of registration. The target was to survey 15 philanthropic organisations in each of the ten countries. This was achieved in 8 out of the 10 countries. We did not secure sufficient responses in Mozambique and South Africa. In Mozambique the limitations were due to political instabilities in some regions of the country and language barrier. The survey was conducted in English. In South Africa, organisations seemed sceptical of the research conducted remotely. The goal was to hear from the key decision makers in the organisations as they would have knowledge of the operations of the organisations. Of the responses we received, 39% were submitted by heads of organisations, while another 23% were completed by respondents in various management positions.



Table 2: Number of responses by country

Country	Percentage of respondents	Number of respondents
Botswana	11%	16
Eswatini	12%	17
Lesotho	11%	16
Malawi	11%	15
Mozambique	5%	7
Namibia	11%	15
South Africa	6%	8
Tanzania	11%	15
Zambia	11%	15
Zimbabwe	11%	16
TOTAL		140

4.1 Background of organisations surveyed

A total of 140 philanthropy organisations participated in the survey. Philanthropy organisations were identified as either of the following organisations;

- Granting organisations
- Corporate foundations
- Religious organisations
- Charity organisations and
- Community foundations.

The survey results show that most of the organisations identified as either a charity organisation (44%) or a community foundation (34%).



Table 3: Type of organisations

Type of Organisation	%	#
Regranting Organisation	7.86%	11
Charity Organisation	43.57%	61
Community Foundation	33.57%	47
Religious Organisation	8.57%	12
Corporate Foundation	6.43%	9
Total Respondents		140

The majority of organisations have been in existence for several years as 61% of them indicated to have been operating for over 10 years. With regards to registration, almost all the organisations (97%) are registered entities. The 3 out of the 4 unregistered entities are organisations that have been established within the last year. The other unregistered organisation is a religious organisation in Zimbabwe also involved in philanthropy but is not required to register to conduct operations.

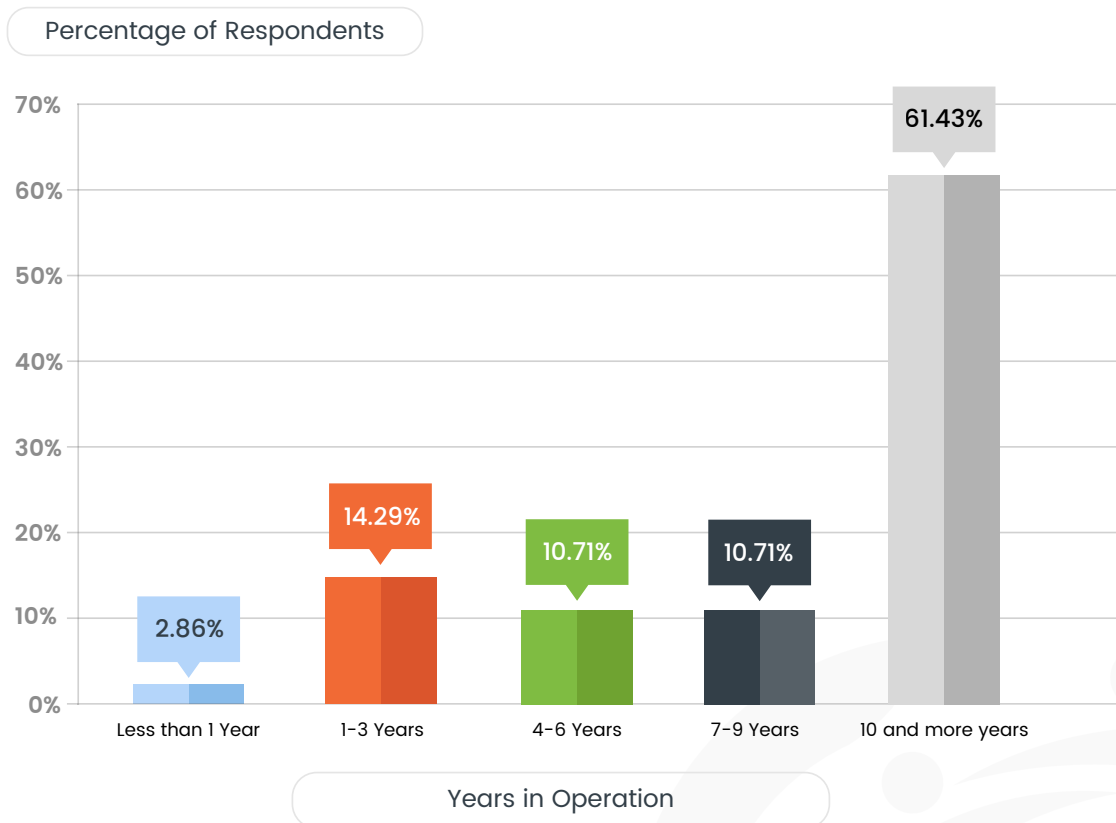


Figure 1: Number of years of operations of an organisation

Philanthropy entities are largely non-profit making in nature and rely mostly on external funding. In a multiple response question that sought to understand where organisations get their funding from, the largest indication of source of funding for these organisations is from individual donors, followed by Official Aid. Although it would be interesting to further interrogate and compare sources of funding by volumes/amounts accrued from the sources, the study only focused on understanding where organisations get their funding from. Only 8 organisations throughout the ten countries acknowledged that they had received funding from a Private African Philanthropy Foundation – these 8 organisations are based in Botswana (1), Eswatini (1), Malawi (1), South Africa (3) and Tanzania (2). Seven (7) organisations indicated that they have an endowment – of which 5 of those have been established for at least 10 years.

Table 4: Philanthropy organisations' sources of funding

Source of Funding	%	#
Official Aid	41.43%	58
Private international philanthropy foundations	30.71%	43
Private African Philanthropy Foundations	5.71%	8
Individual donations	55.71%	78
Corporate Social Responsibility	30.71%	43
Membership	32.86%	46
Endowment	5.00%	7
Other	30.00%	42

4.2 Practitioners' perception of the legal environment

The study sought to assess the level of understanding amongst practitioners of the operating environment they work in. We asked if they knew about the laws that affect the different thematic areas, registration and movement of funds for instance. Table 5



below shows the different responses by country indicating their awareness of the laws. A multiple response question revealed that over half of the respondents were either unaware of the existence of the laws or knew there were laws but were unaware of the actual number of laws that govern a particular thematic area. The majority (39%) indicated that they were unaware of the laws that govern advocacy and human rights focused work. A combined 80% of respondents indicated that they either don't know of the law or are unaware of the number of laws that govern the movement of funds within their countries.

Table 5: Knowledge of laws

Thematic Area	No laws		1 law		2 laws		3 laws		4 or more laws		Don't know how many		Don't know	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Registration	5	4%	24	17%	8	6%	7	5%	16	11%	59	42%	21	15%
Tax	0	0%	20	14%	9	6%	7	5%	13	9%	91	65%	0	0%
Funds - across borders	3	2%	8	6%	4	3%	2	1%	10	7%	86	61%	27	19%
Funds - within borders	6	4%	7	5%	6	4%	1	1%	8	6%	81	58%	31	22%
Advocacy	22	16%	5	4%	0	0%	1	1%	4	3%	53	38%	55	39%
Total	36	26%	64	46%	27	19%	18	13%	51	36%	370	264%	134	96%

4.3 Perceptions on ease of registration and compliance processes

In every country, the registration of organisations is guided by legal instruments that give provisions for requirements to become registered and most laws also stipulate compliance processes and procedures to remain in operation. Laws are put in place to regulate and to aid the operations of organisations and in South Africa, for example, there are at least two laws that govern the registration of philanthropy entities. The laws should ideally make registration processes easier for different categories of

organisations. According to the survey, when respondents across the ten countries were asked how long it took to register entities, 37% indicated that it took one to two months followed by 32% that indicated three to six months.

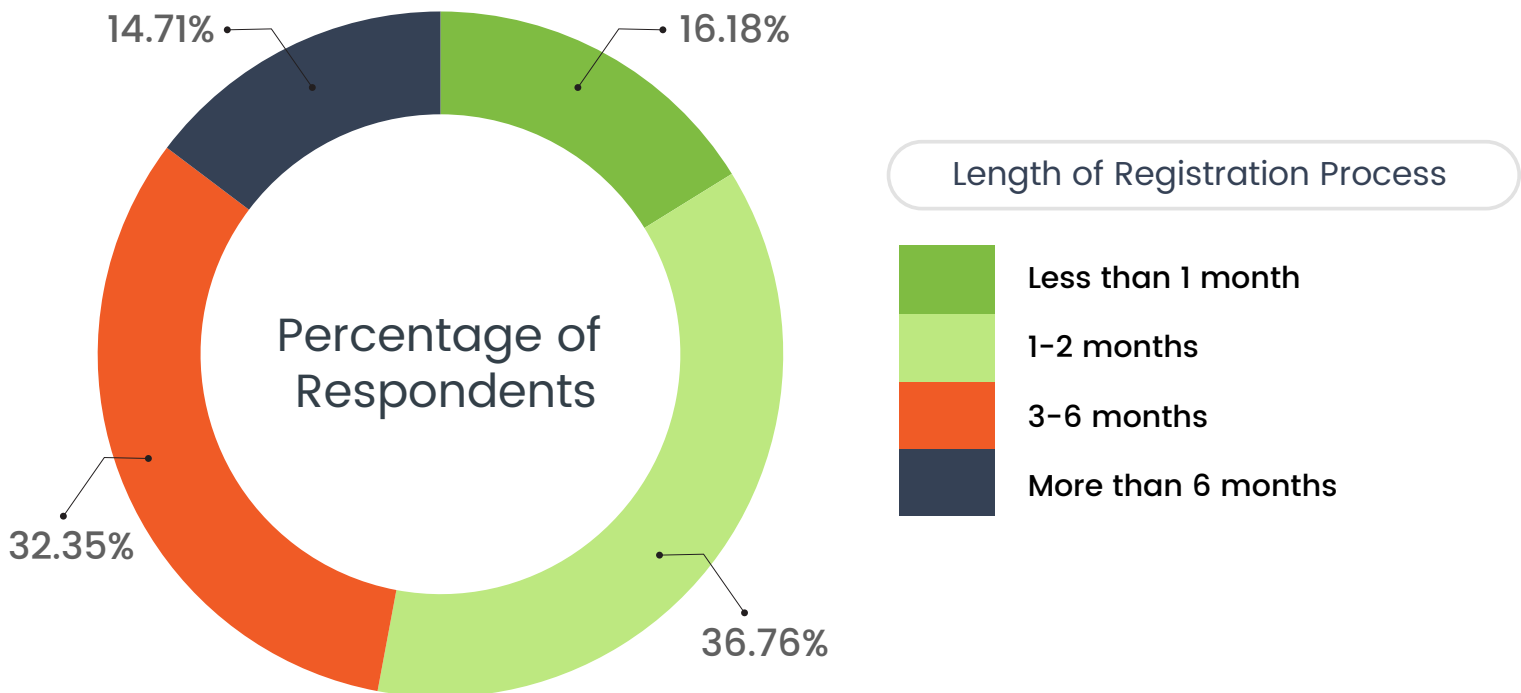


Figure 2: Duration of registration process

We analysed the length of registration by country in order to understand the countries that have a favourable registration turn-around for organisations. Our findings indicated that Eswatini has a fairly shorter registration period for organisations. However, perceptions of the registration period are also affected by the type of philanthropy entity under discussion. For example, those registering as companies limited by guarantee and those registering as community foundations, have different requirements that inform the length of the registration period.

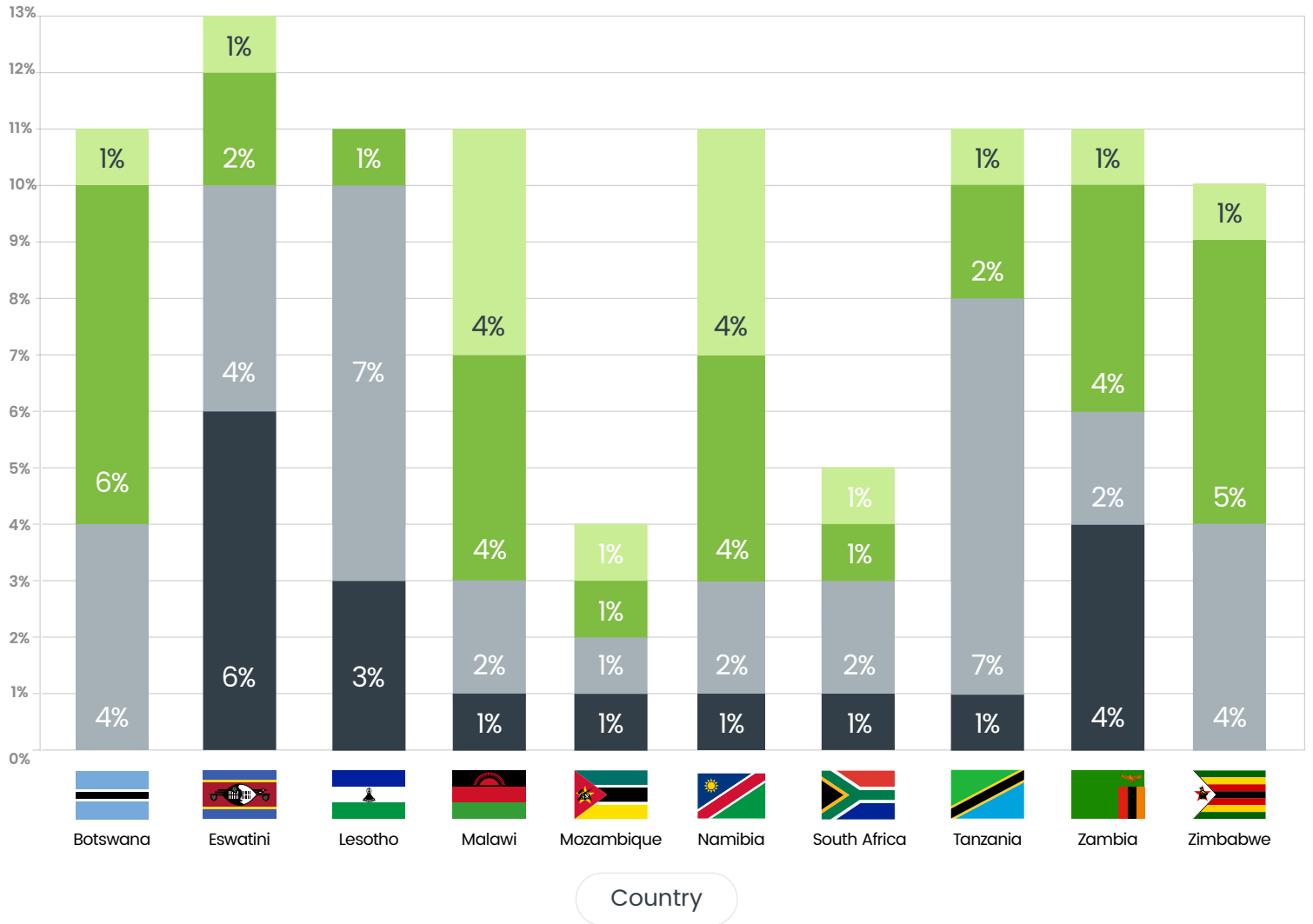
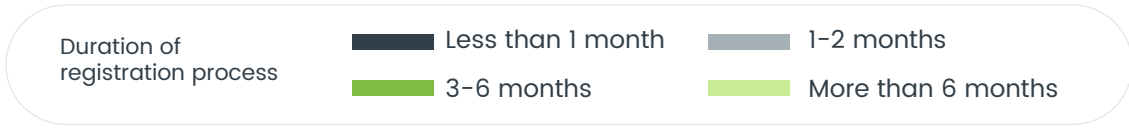


Figure 3: Duration of registration process by country

The survey sought to understand the number of documents required, the ease of producing the documents as well as the general perception of cost of registration. The majority (44%) of respondents across the ten countries indicated that 1-3 documents were required whilst 11% indicated ten or more documents were required. The varied responses were also dependent on the nature of the organisation and the registration



type. Respondents were asked about their perception of the ease of producing the required documents for registration and 43% across the region indicated that it was somewhat easy.

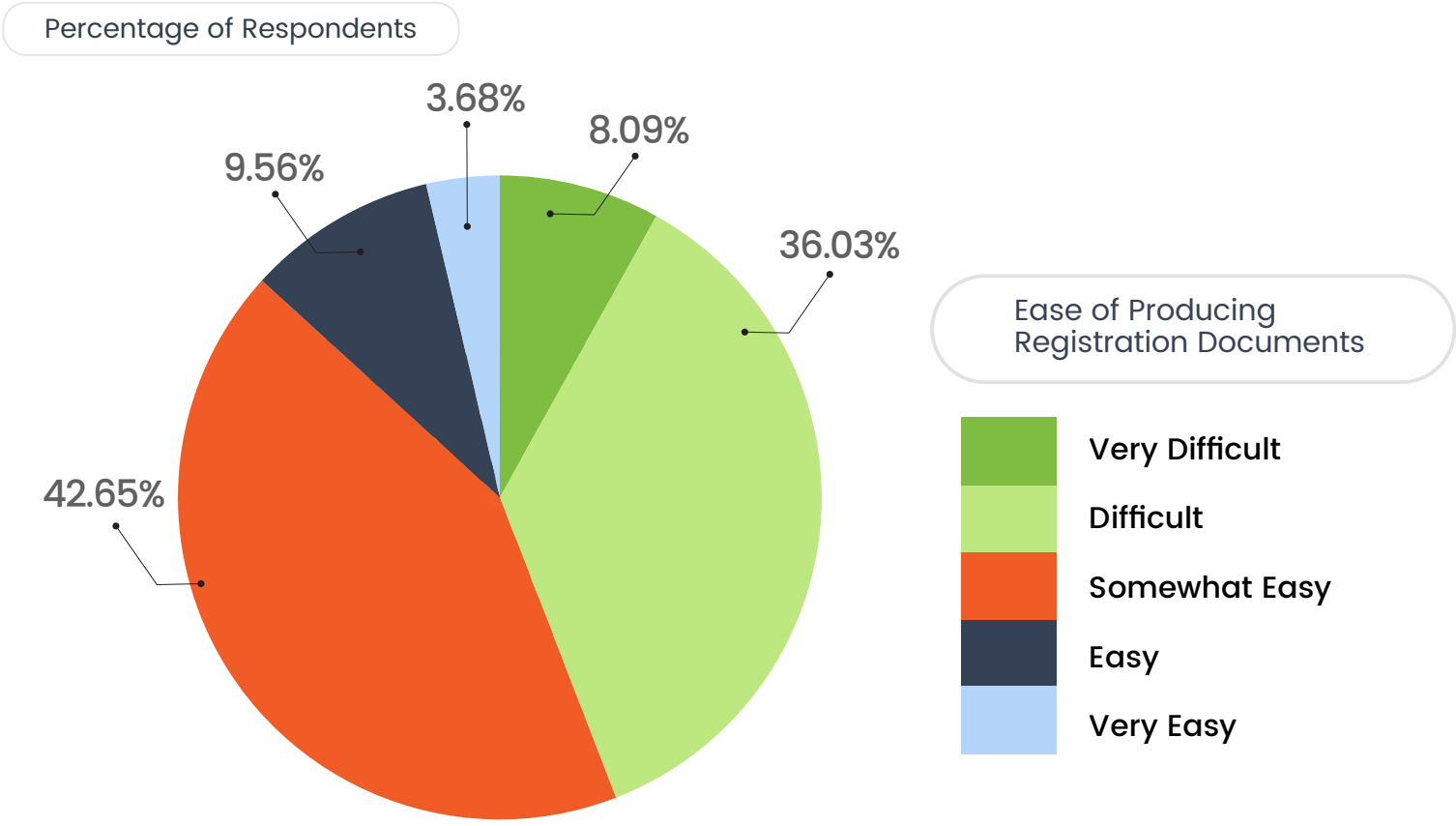


Figure 4: Rating of the ease of producing documents for registration

With regards to the cost of registration, the results show that across the region 61% of the registered entities state the fee is reasonable, a further breakdown by country indicated that respondents in Lesotho (94%), Tanzania (80%) and Zambia (73%) perceived registration as reasonable while Zimbabwe (56%) and Malawi (53%) regarded the fee as costly. Again, the registration fee is dependent on the type of philanthropy organisation owing to the variations in the in-country responses.

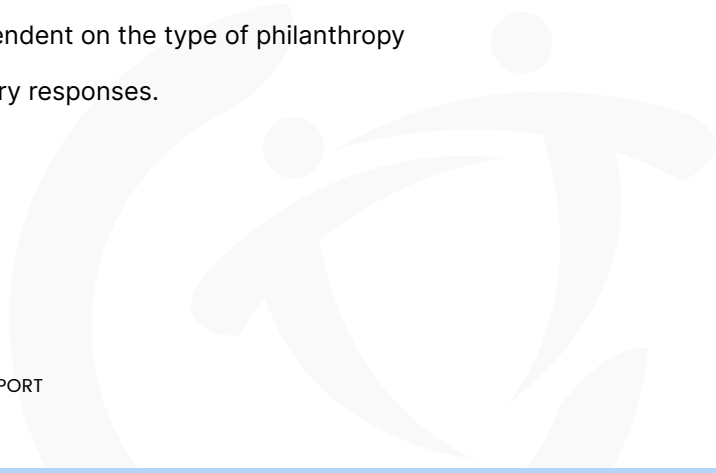


Table 6: Perception of cost of registration

Country	Cost of Registration					
	Free		Reasonable		Costly	
	#	%	#	%	#	%
Botswana	0	0%	10	63%	5	31%
Eswatini	0	0%	10	59%	7	41%
Lesotho	1	6%	15	94%	0	0%
Malawi	0	0%	7	47%	8	53%
Mozambique	1	14%	3	43%	3	43%
Namibia	3	20%	5	33%	7	47%
South Africa	3	38%	5	63%	0	0%
Tanzania	0	0%	12	80%	3	20%
Zambia	0	0%	11	73%	3	20%
Zimbabwe	0	0%	5	31%	9	56%
Total	8	6%	83	59%	45	32%

The survey examined the extent to which decentralisation has an effect on the ease of registration. Most governments are working towards decentralisation of their work for efficient management. There is a growing decentralised infrastructure at regional, provincial/state and district levels. These measures serve to make processes easier for organisations working away from the centre, especially those in marginalised areas. However, the surveyed countries reveal that the majority, 78%, indicated that registration processes have not been adequately decentralised, and applicants still have to travel to certain towns or cities usually capital cities to register their organisations. The table below shows the breakdown of registered organisations' responses per country with regards to the decentralisation of registration centres. All respondents in Malawi and Namibia indicated that registration was not adequately decentralised hence people had to travel to specific cities or towns to register suggesting the existence of a constraint on the ease of registration in these countries.

Table 7: Perception on decentralisation of registration centres

Country	Yes – it can be done at the local offices		No – people travel to specific cities/towns to register		Total Registered Respondents
	#	%	#	%	
Botswana	4	27%	11	73%	15
Eswatini	1	6%	16	94%	17
Lesotho	2	13%	14	88%	16
Malawi		0%	15	100%	15
Mozambique	6	86%	1	14%	7
Namibia		0%	15	100%	15
South Africa	4	50%	4	50%	8
Tanzania	3	20%	12	80%	15
Zambia	6	43%	8	57%	14
Zimbabwe	3	21%	11	79%	14
Total	29	21%	107	79%	136

There is evidence of increased use of digital platforms in the registration and submission of annual compliance documents amongst philanthropy organisations globally. The shift towards the use of digital processes has since proven to be the answer to most bottlenecks due to the convenience and efficiency it brings. Figure 5 below shows the breakdown of responses by country of the respondents' perception of the availability of online registration facilities. Only respondents from South Africa were consistent about the availability of the facility, whilst 60% of the countries had more than half of the respondents indicating that there are no online facilities. These findings suggest that practitioners find the registration process to be very difficult as most countries seem to not have introduced efficient ways of easing the process.

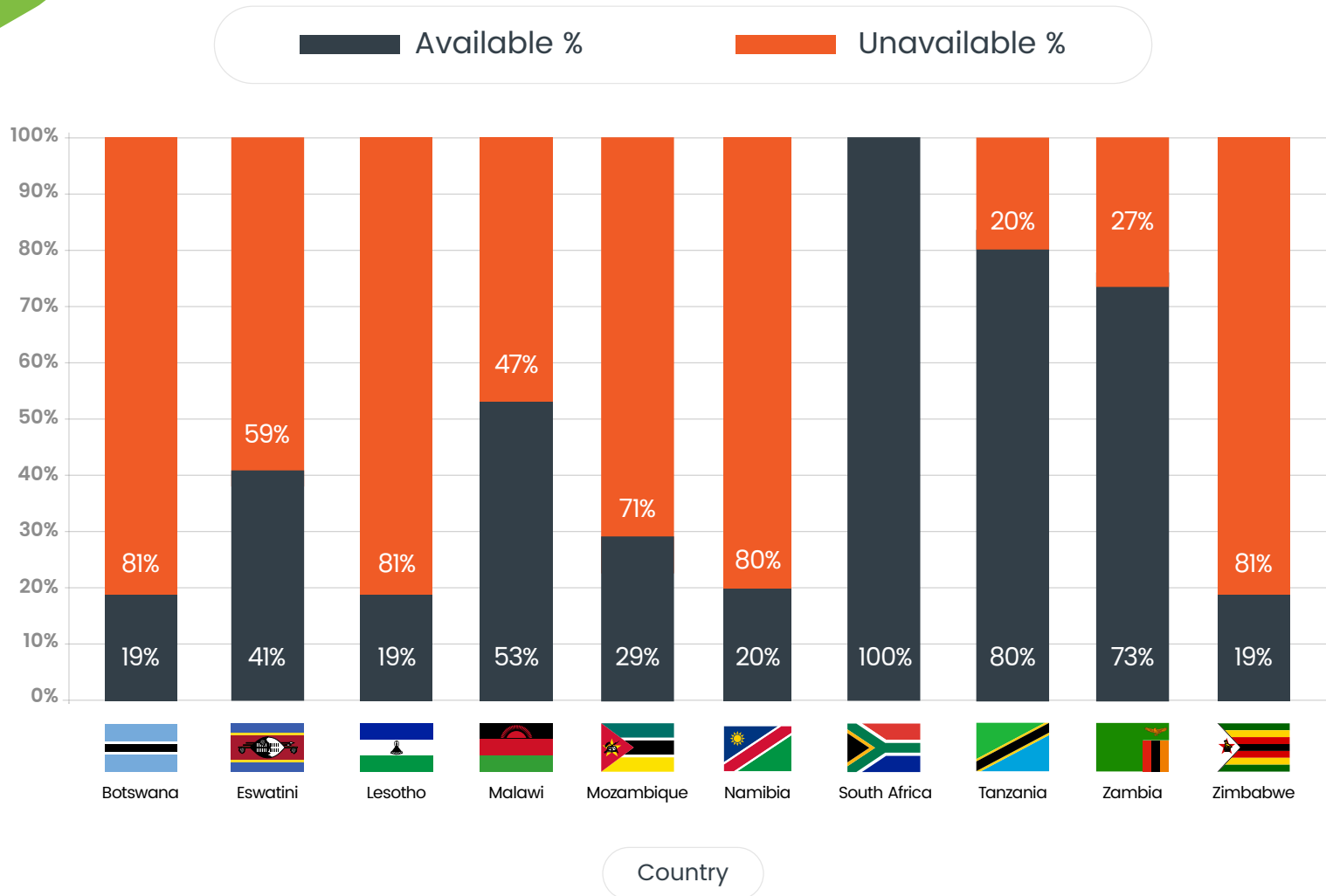


Figure 5: Availability of online registration facility

Those who indicated that online facilities were available were asked to rate the efficiency of the registration mode. Only 19% indicated that the mode was fairly efficient. Also those who used in-person facilities were asked to rate the efficiency of the mode of registration and 35% thought it was fairly efficient.

4.4 Compliance requirements for philanthropy organisations

To ensure organisations remain operational they should adhere to existing government regulations. As part of compliance requirements some organisations (48%) stated that registration renewal was mandatory while 52% indicated that they were not required to renew. Of those who indicated that renewal of registration was mandatory, 60% stated that it was done annually which many deem too strict.

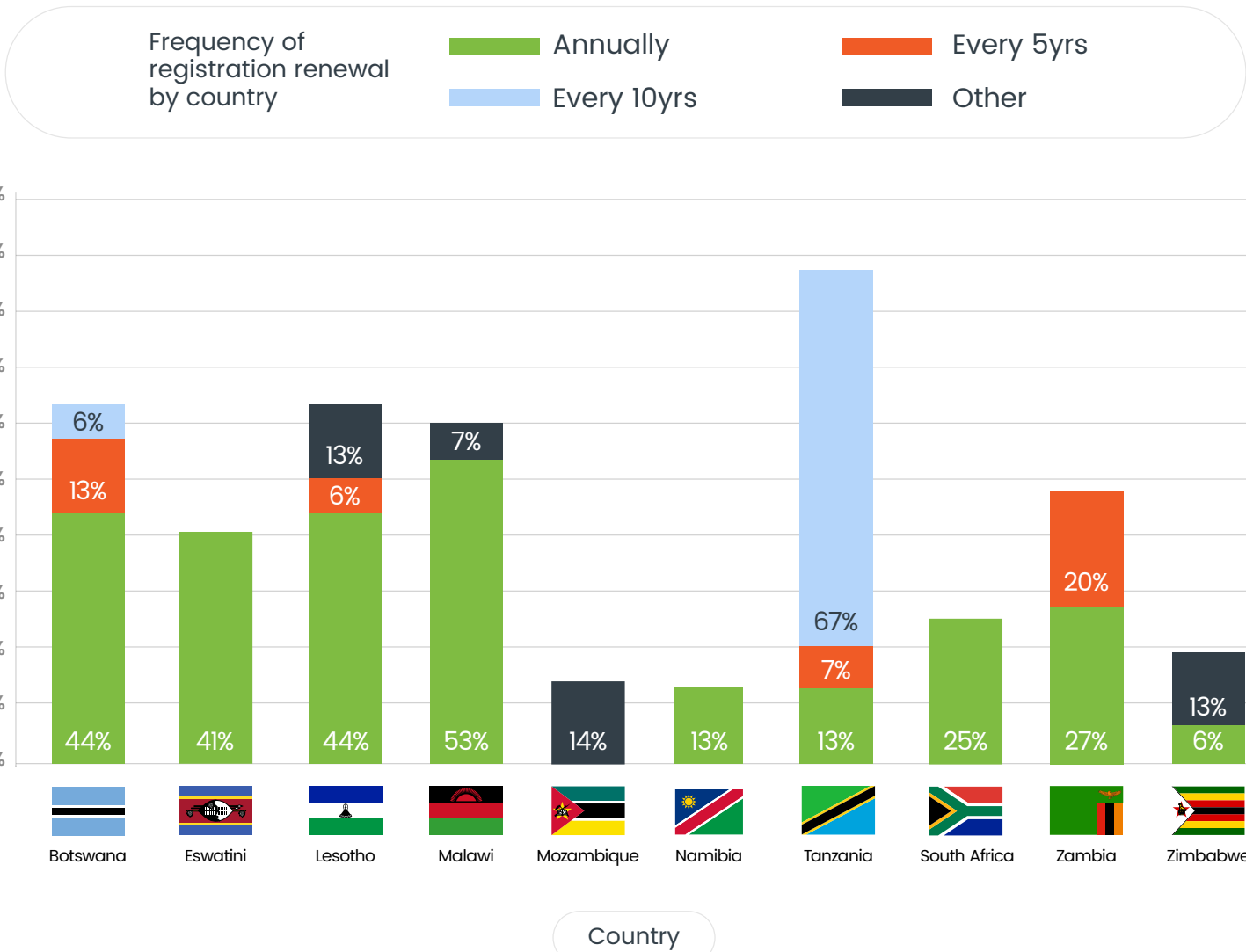


Figure 6: Frequency of registration renewal by country

Renewal of registration was also analysed by country to compare the frequency of registration renewal. As shown in Figure 6, most countries (9/10) had respondents indicating renewal is done annually with Malawi having the highest number of its respondents (53%) indicating they renew registration annually as part of state oversight on organisations. Tanzania however has the largest percentage of country respondents indicating that renewal is done after every ten years as part of state oversight of organisations. Zimbabwe barely requires for renewal of registration as part of organisational compliance although 6% (n=1) indicated they renew annually.



Research on laws showed that there are about twenty-two (22) laws across the region that guide organisations' compliance to remain registered. In Tanzania for instance through the Non-Governmental Organisations Amendment Regulations of 2019, NGOs are required to disclose to the public, the Council, the Board and other stakeholders within fourteen days from the date of the completion of the fundraising activities: the source of funds or resources obtained; expenditure of fund or resources obtained; purposes of fund or resources obtained; and activities to be carried out from the funds or resources obtained. Such compliance regulations imply a serious government oversight of organisations which may hinder philanthropy as some donors prefer keeping anonymity. In some countries, as part of state oversight for organisations to remain operational, they are obligated to renew registration. In Zambia for instance, to remain operational, organisations through the Non-Governmental Organisations Act of 2009, are required to renew their certificate of registration and should apply to the Board at least three months prior to the expiration of the certificate.

4.4.1 Banking and Compliance

Another area of compliance for philanthropy entities is with the banking sector. Philanthropy organisations are required to have bank accounts for ease of managing funds received and for operations. In a multiple-response question, all the organisations indicated compliance with bank requirements was also essential to their operations. The majority, 81%, indicated that banks required for them to have three or more signatories to open an account while 69% indicated that they were mandated to declare their source of funds. This could also be in line with curbing money laundering activities and to ensure transparency and legitimacy of the organisation.



Table 8: Bank requirements to ensure organisation's compliance with the banking sector

Bank requirements	%	#
Declaration of the source of funds	69.29%	97
3 or more Signatories	81.43%	114
Signatories are strictly domicile in the country	25.71%	36
Number of accounts the entity has to have	15.00%	21
Other	19.29%	27
Total		140

4.5 Raising and moving monetary resources

Effective philanthropy requires a reliable network of financial service providers with the capabilities to move funds across borders with limited hindrance. The majority of the organisations that we studied rely on mobilising funds from external jurisdictions. Frameworks of regional integration such as the Common Monetary area which Namibia, South Africa, Lesotho and Swaziland are part of, aids in the movement of money across these countries. The framework states that the South African Rand is legal tender in all four countries and other currencies can be transacted within the countries using the prevailing rate for the Rand. This has helped to ease the movement of money, which is an advantage to philanthropy organisations operating within these borders.

Some restrictions on the movement of money cut across borders as many countries are trying to adhere to the FATF recommendations to fight money laundering and financing of terrorism crimes. So far in 2023 three of the countries in the region, Mozambique, South Africa and Tanzania have been grey listed by the task force. Through various countries' Financial Intelligence Units, there are laws in place to curb criminal activities.



For example, Zambia has The Prohibition and Prevention of Money Laundering Act, 2001 and the Financial Intelligence Centre (Amendment) Act, 2020 while Botswana has the Financial Intelligence Act, 2022 among others. Respondents across the region were asked about their perceptions of the flexibility of laws that govern the movement of resources across the borders of their countries. The majority (56%) of them indicated that the laws were fairly flexible.

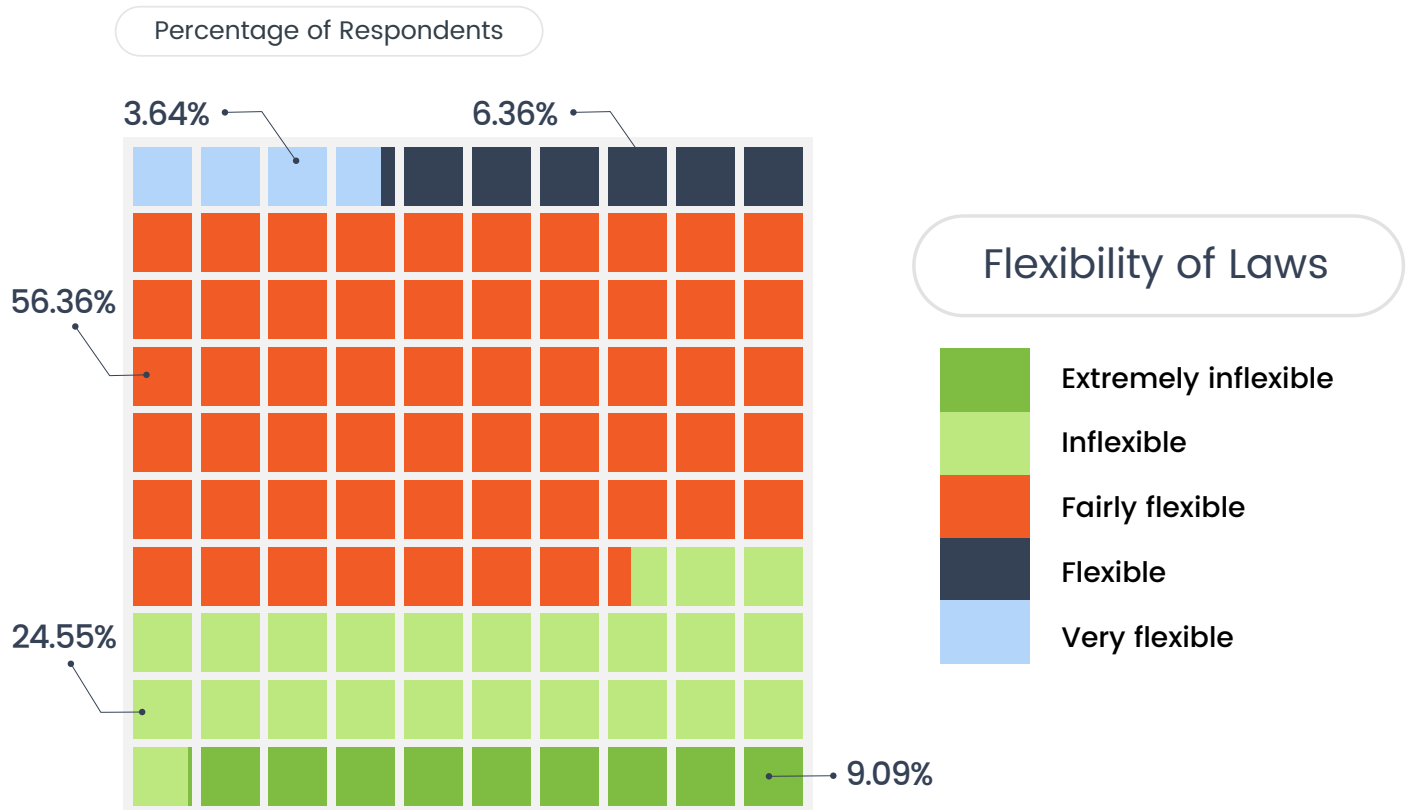


Figure 7: Perceptions of flexibility of laws for the movement of money across borders

While the laws were deemed fairly flexible by the majority, upon assessing the cost of moving funds across borders 64% of respondents indicated that the charges are very high. Only 34% and 3% indicated that the cost was fair and low respectively. We asked respondents if they can retain received grants in the currency of origin for example grants received in United States Dollars. The majority (71%) indicated that they could retain the grants in the currency it was sent in while 29% stated otherwise. On further interrogation, we sought to find out what happens to the money from the 29% that could not retain the grants in the sent currency. Table 9 below shows that 58% of the respondent's grants are liquidated into a local currency upon arrival.

Table 9: Actions on received grants

Action	%	#
The money is liquidated upon arrival	57.50%	23
The money is auctioned to the highest bidder	0%	0
Other	42.50%	17
TOTAL		40

Also on assessing the movement of funds within the country, 50% of respondents indicated that the laws that govern the movement of money were fairly flexible (see Figure 8).

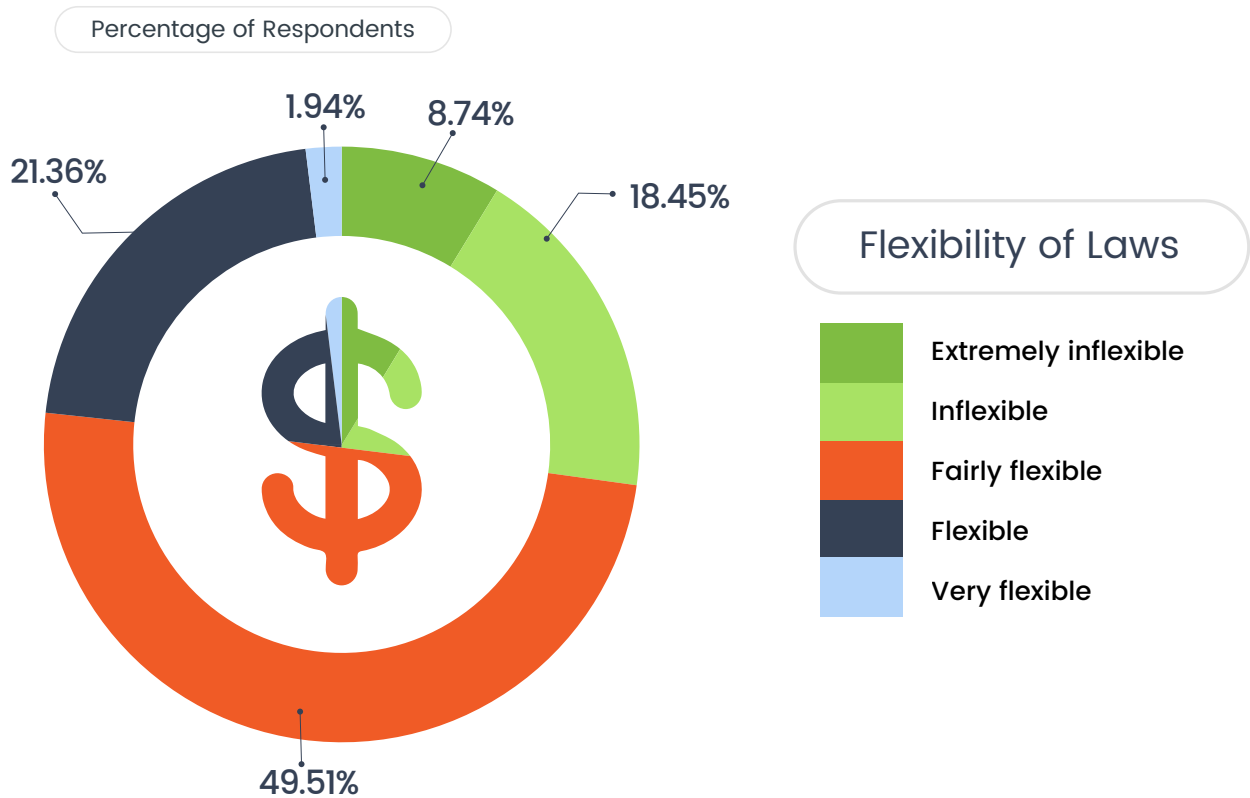


Figure 8: Perceptions of flexibility of laws for the movement of money within the country



With the rise of technology platforms for ease of transacting funds, giving has been made possible regardless of location and distance. Mobile money platforms such as the SafariCom M-Pesa which operates in nine countries, four of which are part of the study, has enabled many people to transact even across borders in response to needs. Respondents were also asked to rate the cost of transacting within their countries. The majority 49% indicated that the charges were fair while 42% and 9% indicated that they were high and low respectively.

4.6 Taxation and incentives for giving

The survey sought to understand the extent to which philanthropy practitioners are aware of the existence of tax-based incentives for giving. Respondents were asked if there was a tax code for philanthropy in their countries and 66% across the region indicated that there is a tax code for giving.

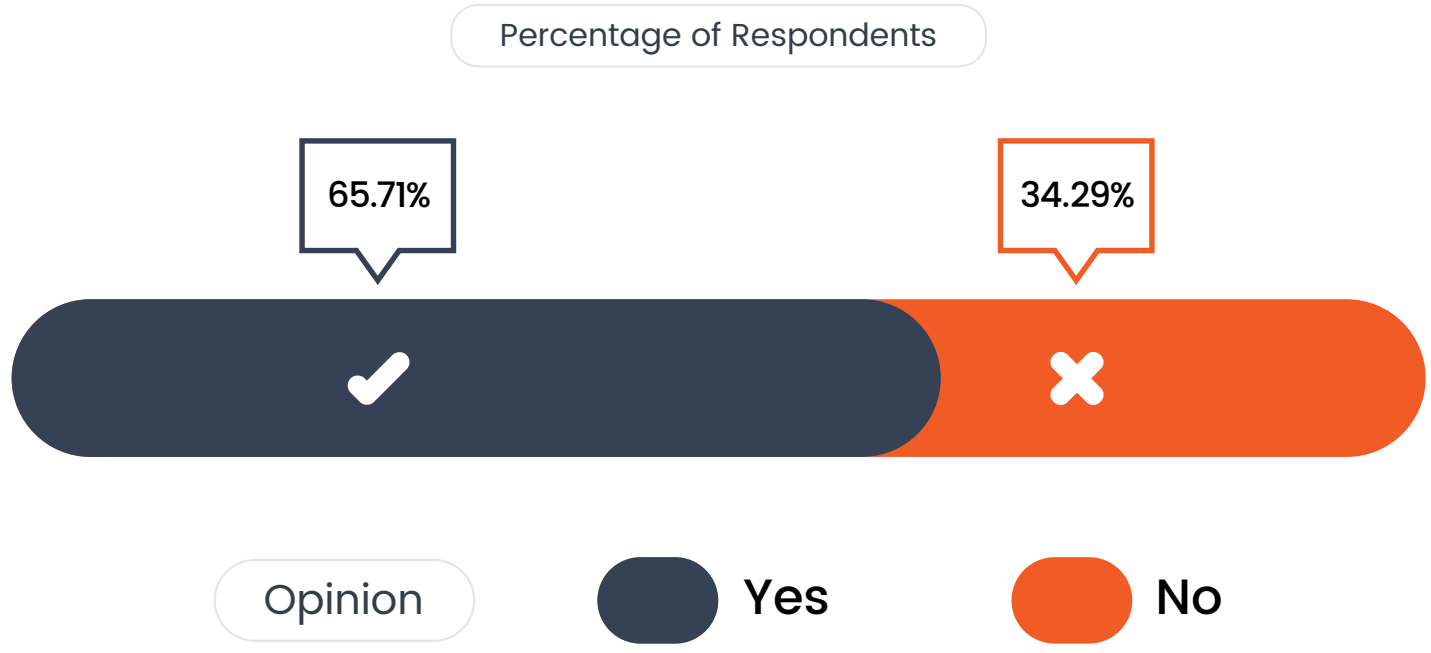


Figure 9: Existence of a tax code

Various tax regimes affect giving at an individual level and at an organisational level. The study focused on five types of taxation regimes which are Value Added Tax (VAT), Pay as You Earn (PAYE), Customs Duty, Tax on transfers and Income Tax. The study sought to understand the rates at which organisations were taxed and to also find out if they



benefited from any exemptions, which is a mechanism for philanthropy promotion. In many instances tax exemptions are viewed as an incentive to promote philanthropy by easing the financial burdens of organisations. Also some tax rebates exist for individuals as part of a process to promote the culture of giving in South Africa for instance. Most respondents across the region stated that there were tax exemptions on VAT (46%), PAYE (26%), Income Tax (40%), Customs Duty (46%) and Tax on Transfers (39%). This data shows that PAYE, an individual tax charged on philanthropy organisations' employees has the lowest percentage of exemption. This is because it is the only one that has the greatest number of people (33%) indicating that they paid the highest possible rate for PAYE at 20% and above. Income tax had 21% of respondents paying the high rate of 20% or higher. Rates of taxation on PAYE and Income tax are also dependent on the type and nature of the organisation, hence the variation in responses across the region.

Percentage of Respondents

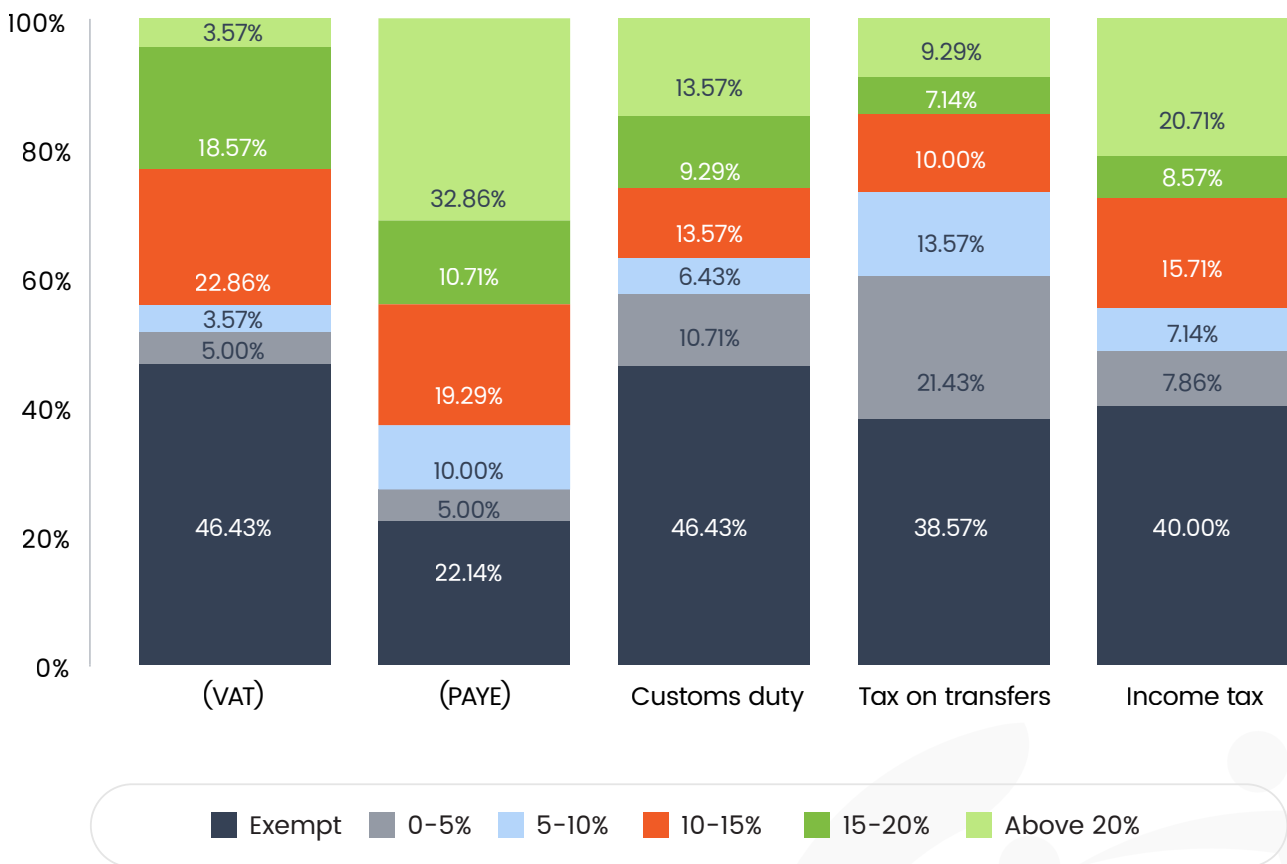


Figure 10: Perceptions of rate of taxation



4.7. Presence of a philanthropy regulatory body by country

Currently no country has a designated philanthropy regulatory body or a philanthropy promotional agency that oversees or nurtures philanthropy organisations specifically. Various ministerial bodies and boards regulate some aspects of philanthropy organisations. Some regulate registration while others focus on compliance issues or both and yet others make provisions for taxations and tax rebates to support the sector. However, prevailing perceptions amongst those working in philanthropy are somewhat at odds with what is actually in place. The majority (59%) of respondents indicated that there was a philanthropy regulatory body of some sort while 41% thought otherwise. As part of compliance processes and procedures, 60% of those who indicated the existence of a regulatory body stated that they submit reports to the body while the other 40% indicated otherwise. There were varied responses as to how often they were required to submit the reports due to the previously stated fact of having various bodies regulating aspects of philanthropy entities. Most (70%) of those who submit reports indicated that they submit annually to the regulatory body.

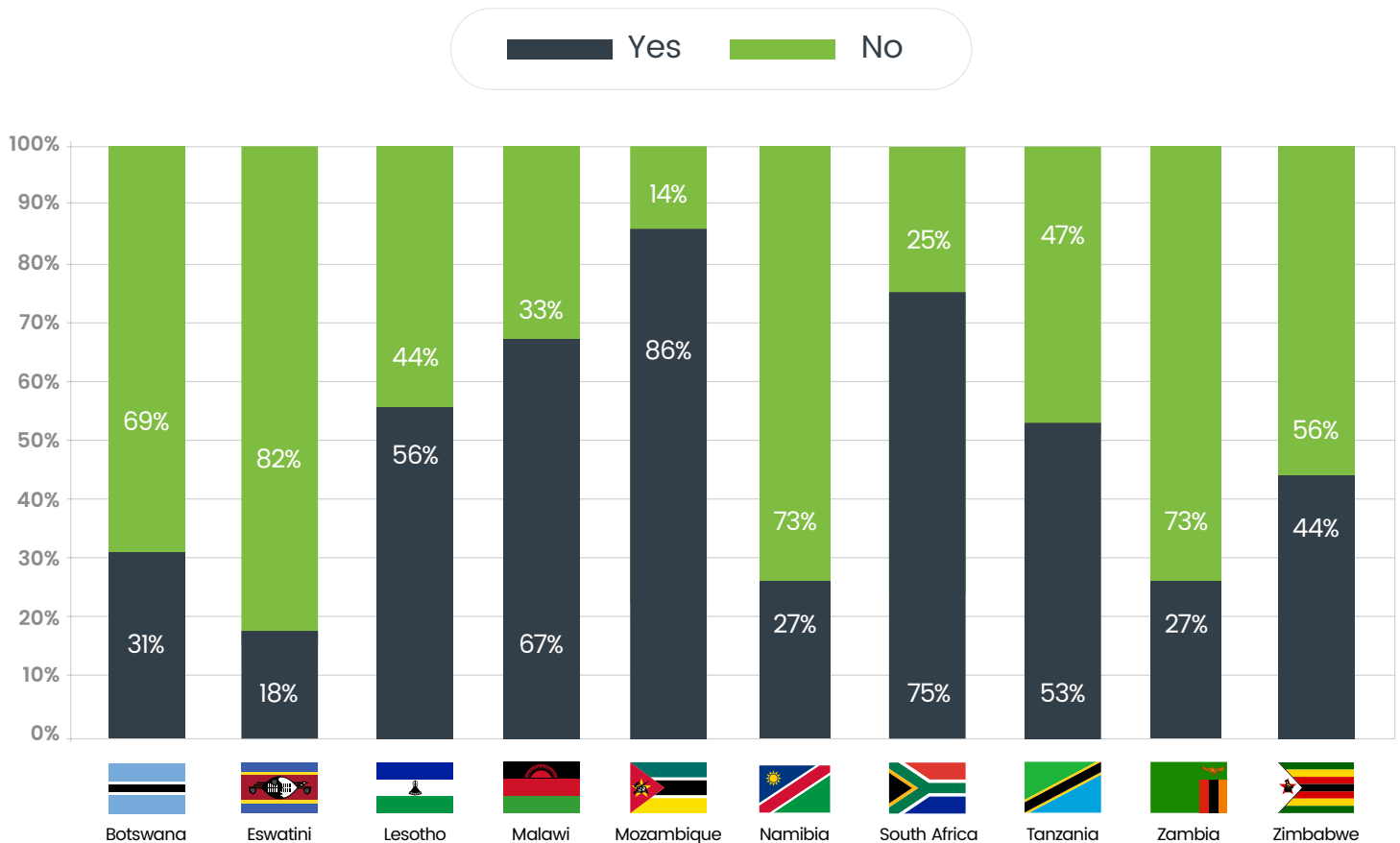
4.7.1 Philanthropy Agency and Policy

The survey asked a question to find out the practitioners' thoughts on the existence of a philanthropy promotional agency in their countries. An overwhelming number 82% indicated that there was no specific philanthropy promotional agency while 18% indicated that there was one. This study also seeks to influence policies that enhance philanthropy in the region, so we sought to find out if there are any policies in place from a practitioner's point of view. There was a small difference between those that think there is no policy and those thinking otherwise. A slight majority (56%) indicated there was no policy while 44% indicated there was a policy. From the analysis of laws and policies done, there is no country that has a specific policy that addresses philanthropy although there have been measures put in place, for example, in South Africa where there is The Disaster Management Tax Relief Bill (2020) that caters for times of disasters and disease outbreaks like the COVID-19 pandemic. The policy was formulated to amend



the Employment Tax Incentive Act of 2013 to make new provisions for the tax treatment of certain organisations for disaster relief in respect of the COVID-19 pandemic and donations to such organisations.

A deep dive into country perceptions of the existence of a policy shows that in Mozambique (86%), South Africa (75%), Malawi (67%), Lesotho (56%) and Tanzania (53%) the general perception is that there is an existence of such a policy. On the contrary in Eswatini (82%), Zambia (73%), Namibia (73%), Botswana (69%) and Zimbabwe (56%) the majority indicated that there is no policy for philanthropy³.



Country
Figure 11: Presence of a policy for philanthropy

³ [https://www.treasury.gov.za/legislation/bills/2020/%5bB11-2020%5d%20\(Disaster%20Management%20Tax%20Relief\).pdf](https://www.treasury.gov.za/legislation/bills/2020/%5bB11-2020%5d%20(Disaster%20Management%20Tax%20Relief).pdf)

4.8 Giving and wider national development

Many governments have taxation systems in place to collect money from citizens to finance state activities for national development. The rise of philanthropy activities as well as formal structures in the sector are thought to contribute towards national development, hence the need to promote the practice. One of the ways to encourage, grow and nurture philanthropy is through the provision of incentives for giving and encouraging philanthropy players to actively participate in developmental projects. The survey asked respondents across the region if there was a tax benefit to individuals and corporates for donating. The majority (54%) indicated that there was none, while 46% indicated that there was a tax benefit.

Table 10: Tax benefit to individuals and corporates

	Existence of Tax Benefits				Tax Benefit									
	No		Yes		Tax relief on gross income		Tax exemptions on donations		Deduction on income tax		Tax Exemption on Capital Gains		Other	
Country	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Botswana	11	69%	5	31%	1	6%	2	13%	1	6%	1	6%	0	0%
Eswatini	11	65%	6	35%	3	18%	4	24%	2	12%	1	6%	0	0%
Lesotho	10	63%	6	38%	3	19%	2	13%	1	6%	1	6%	0	0%
Malawi	10	67%	5	33%	1	7%	5	33%	1	7%	2	13%	0	0%
Mozambique	4	57%	3	43%	0	0%	2	29%	0	0%	1	14%	1	14%
Namibia	8	53%	7	47%	2	13%	4	27%	0	0%	0	0%	2	13%
South Africa	1	13%	7	88%	2	25%	7	88%	4	50%	1	13%	0	0%
Tanzania	8	53%	7	47%	3	20%	3	20%	2	13%	2	13%	0	0%
Zambia	6	40%	9	60%	2	13%	5	33%	3	20%	2	13%	2	13%
Zimbabwe	6	38%	10	63%	5	31%	8	50%	4	25%	1	6%	0	0%
Total	75	54%	65	46%	22	16%	42	30%	18	13%	12	9%	5	4%

For this study, we identified four types of exemptions that can be awarded to individual and corporate donors. Tax exemptions on donations was recorded as the highest at 30% indication across the region with South Africa recording the highest percentage (88%) of responses indicating there was a tax exemption on donations.

4.9 Supporting advocacy-focused work

The philanthropy sector in some cases is not being spared from the wrath of states and their attempts at constraining freedoms in the civic space. Some organisations support governance and human rights focused work which in many instances is seen as a threat or subtle opposition to governments. Organisations across the region were asked about their awareness of laws that affect governance and human rights focused work. The majority of respondents (77%) showed a lack of knowledge around the existence of the laws that affect the support for governance of politically focused work as well as the support for human rights work. For some (38%) they just thought there were laws but were not aware how many they were while 39% indicated they don't know if there are laws affecting that area.

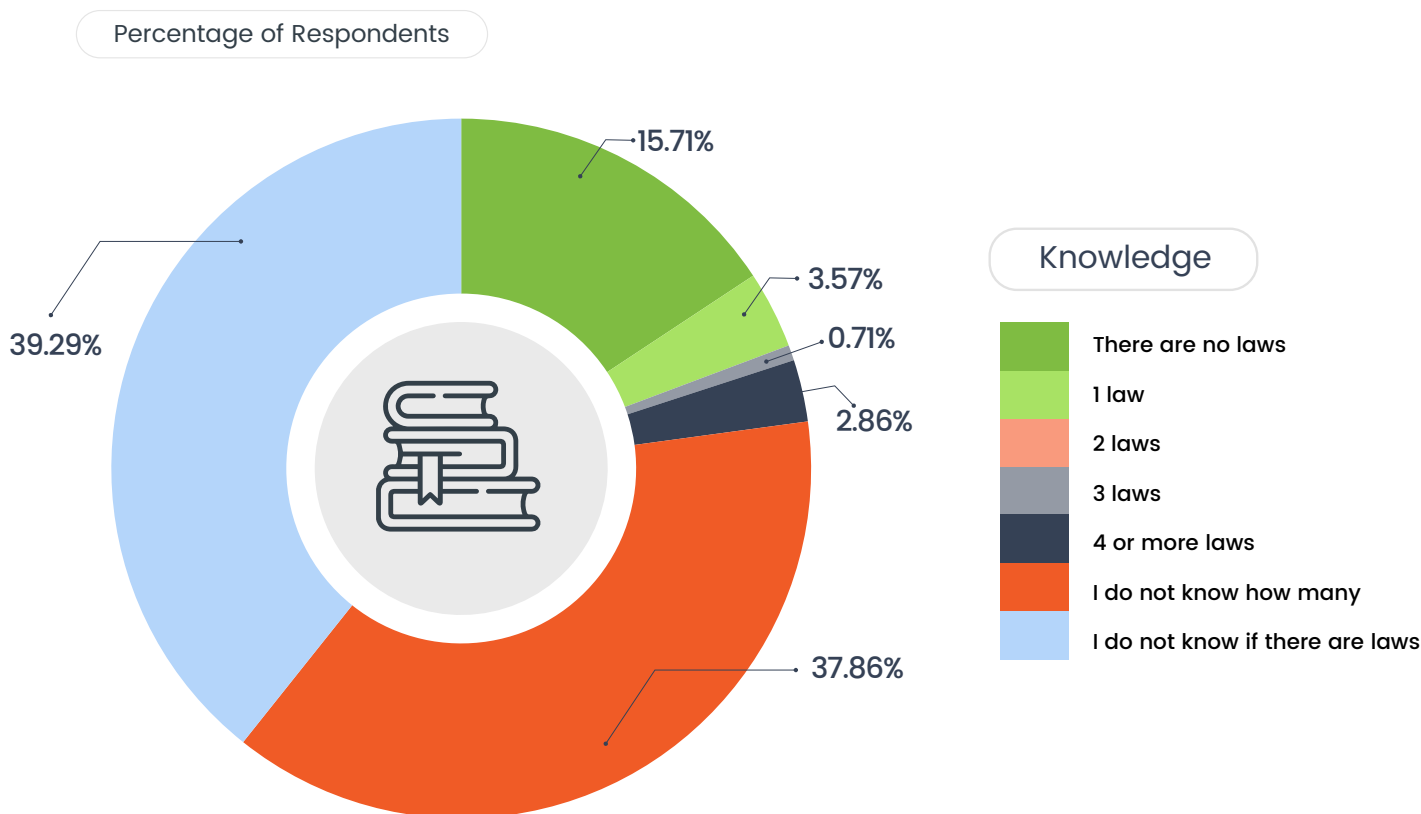


Figure 12: Knowledge of laws that allow for support of advocacy work.

Countries like Botswana and Lesotho do not have laws that directly prohibit or enable civil society's work around governance and human rights focused work. In Zimbabwe there are no specific laws preventing civil society from focusing on governance issues



but there are allegations of increased surveillance on organisations that work in that space. On the other hand, South Africa has favourable laws that enable the support of human rights and governance focused work. This is mostly due to the Abolition of Restrictions on Free Political Activity Act of 1993 which revoked the laws placed under apartheid to curtail opposition and advocacy for freedom. However, the country through the Income Tax Act restricts public benefit organisations (PBOs) from using their resources to support, directly or indirectly, to advance, or to oppose any political party in South Africa although the law does not restrict the political activities of organisations that are not approved as PBOs. This suggests that other philanthropy entities or activities that are not recognised as PBOs may support such work.



5.0 Conclusion and Recommendations

The dominant running theme in the preceding sections suggests the need for a more coherent framework to nurture and grow the philanthropy sector across the sub-region. Experiences from other regions outside of Africa and also from within the continent such as Liberia, Nigeria and Rwanda suggest that philanthropy has to be recognised as a complementary actor, focused on advancing national and democratic development. It is a site which enables the growth of agency amongst locals and in the process discourages increasing levels of dependency on foreign aid. Existing laws and policies are unevenly understood and potentially hamper the growth of local or domestic resource mobilisation.

We recommend that the SADC secretariat takes the lead in promoting philanthropy as an antidote to growing levels of dependency and poverty. There is a need to invest in consultative processes with the emergent high net worth led philanthropy foundations, intermediaries and community-based foundations. Perhaps a good starting point would be to develop guidelines for a national philanthropy framework. The framework would include, but not limited to the following:

- i) Affirmation Clause (containing general consensus by philanthropic NPOs stating the intention to establish and be bound by the guidelines)
- ii) Background and Objectives of Guidelines
- iii) Core values and shared principles by philanthropy organisations for their effective operation
- iv) Role of philanthropic entities towards national development
- v) Universal Rights of philanthropic NPOs and the extent of their (reasonable) limitation
- vi) Barriers affecting the effective operation of philanthropy organisations (across different areas: registration, financial standards, civic participation freedoms etc)
 - a. Ease of registration
 - b. Compliance processes and procedures
 - c. Ease of moving funds
 - d. Ease of supporting political and civil rights focused work
 - e. Tax regimes
 - f. Existence of incentives for promoting growth and the role of philanthropy in national development
 - g. Rights and freedoms of philanthropic entities
- vii) Recommended standards and best practices
- viii) Schedule A - Code of Conduct for Philanthropic Organisations



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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