

Catalyzing Local Philanthropy in Kenya



COMMISSIONED BY THE CHILDREN'S INVESTMENT FUND FOUNDATION, "FOR AFRICA BY AFRICA" (DEVELOPED BY THE AFRICAN INSTITUTE FOR DEVELOPMENT POLICY (AFIDEP))

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Philanthropy or giving to support and promote the welfare of others in society is a normalized way of life in Kenya; others will argue that it is part of the Kenyan spirit. At the corporate level, philanthropy has, over the last two decades, grown rapidly in Kenya. New entities like Safaricom Foundation, Equity Foundation, Kenya Commercial Bank Foundation, and the Aga Khan Foundation have either launched or expanded their work across various key development sectors. Diaspora remittances into the country to support families have also been on the rise.

Despite these realities, philanthropy in Kenya remains largely ad hoc, with little strategic coordination for impact. This lack of institutionalization and coordination negatively affects the sustainability of philanthropic initiatives. Even so, this may be symptomatic of the uncondusive national policy and legal environment for giving and volunteering. While some necessary regulatory frameworks and governing bodies are already established, these are unevenly implemented, and key gaps to fully tap into the value of philanthropy persist.

We summarize the key legal provisions and the gaps we have identified in the table below:

NAME OF LAW	PROVISION	GAP / CONCERN
Public Organizations Benefits Act 2013	Seeks to provide an enabling environment for non-governmental organizations in the country e.g. registration, accountability mechanisms, tax incentives and benefits for PBOs	<ul style="list-style-type: none">• Not yet operationalized e.g. Public Benefits Authority as provided for under Section 34(1) of the Act is yet to be established.• Need policy reform to address the distinct nature of 'Foundations'• Jubilee administration has been keen to institute more restrictive measures in the PBO Act to clamp on governance related civil society groups in the country.• Need to align PBO Act 2013 with Income Tax Act.

NAME OF LAW	PROVISION	GAP/CONCERN
Income Tax Act and Income Tax (Charitable Donations) Regulations 2007	Income Tax Act provides a framework for charging and collecting income tax.	<ul style="list-style-type: none"> • Section 15 (2) (w) Income Tax Act (ITA): exemption on any cash donation to a charitable organisation registered or exempt from registration under the Societies Act or the Non-Governmental Organisations Corporations Act, 1990. This provision ignores other forms of donations other than cash or cheque e.g. food stuffs, land, professional services, and other quantifiable in-kind donations. • Need to relook at the law on application for tax exemption certificates. Discretion granted to the Commissioner is often abused and the process of getting the tax exemption certificate is too long and tedious. There should be a time limit on when to get a tax exemption certificate.
Value Added Tax Act	Provides a framework for imposing tax on goods exported or imported into Kenya, and certain services supplied or imported into Kenya	<ul style="list-style-type: none"> • Section 23 on 'remission of tax'. While the law allows for tax refund if the taxable goods or services are for public interest (e.g. from a charitable organization), implementation by Kenya Revenue Authority makes the process too cumbersome and tedious.
Public Officers Ethics Act 2003	Meant to enhance integrity and accountability in public service	<ul style="list-style-type: none"> • Law not fully implemented especially ban of 'Public Officers' from leading harambees.
Customs and Excise Duty Act	Power of the Minister to refund of duties	<ul style="list-style-type: none"> • Section 138 (2) empowers the Commissioner to ascertain whether the donations are to a charitable organization. Implementation of this provision has been found to be cumbersome and tedious.

We also note that The National Treasury and Kenya Revenue Authority has a distinct policy mandate that can either spur or undermine local philanthropy in the country. For instance, both institutions could unlock the potential of full execution of the Income Tax Act. The National Treasury can also play a role in tapping into the resources under the Unclaimed Assets Authority. However, these are legal and policy matters that require political drive and willingness to change, which will require focused and long-term effort from multiple stakeholders, primarily corporate philanthropists, to engender.

We are encouraged, however, by two factors. Firstly, although COVID-19 has affected the global economy, and could further disincentivize giving in Kenya, we have previously {LINK} written about how multiple stakeholders have stepped up to give back during these uncertain times. If we act deliberately and swiftly, we may capitalize on this momentum to institutionalize philanthropy locally.

Secondly, there is a growing commitment to better coordinate the giving space across the African continent. For instance, the East Africa Philanthropy Network (successor to East Africa Association of Grantmakers) has been championing this collaboration in addition to other actors like the Kenya Community Development Foundation. Impact Philanthropy Africa is also a newly founded forum, convened by the M-PESA Foundation and the Children's Investment Fund Foundation, and comprising self-funded corporate and private charitable foundations working in Kenya to create social impact. One of our strategic focus areas is advocacy towards a more supportive policy and regulatory environment for local philanthropy.

[1] Kenya Community Development Foundation (2014), Creating and Enabling Environment for Philanthropy Through Tax Incentives. Available online at: <https://www.kcdf.or.ke/index.php/resources/publications>

Impact Philanthropy Africa is a new forum of self-funded corporate and private charitable foundations working in Kenya to create social impact. Impact Philanthropy Africa members are committed to the public benefit and to their philanthropic purposes and are working to build a culture of corporate social investment (CSI) and influence policy through advocacy and thought leadership. The Children's Investment Fund Foundation (CIFF) and the M-Pesa Foundation are the co-conveners of the Forum.

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