

CREATING AN ENABLING ENVIRONMENT FOR
PHILANTHROPY
THROUGH TAX INCENTIVES

A Collaborative Initiative between KCDF & Strathmore Tax Research Centre



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Background

KCDF is a public philanthropic foundation that supports sustainable community driven development. KCDF's theory of change is based on the premise that systemic and enduring change is possible when communities are able to initiate and drive their development agenda by working with governments and other actors to access basic rights and services as well as harness and grow their own resources.

Strathmore Tax Research Center (STRC) is a semi-autonomous research center housed by the Strathmore Law School. It aims at creating a highly regarded and dependable hub of credible and cutting edge research as well as relevant and niche training in tax law, for the benefit of the government, the private sector, civil society, academia and, citizens of Kenya.

KCDF and STRC have collaborated on a research initiative that aims to establish evidence to support multi stakeholders' advocacy for the realization of an enabling tax environment that promotes sustainable local philanthropy. Kenyans have a long history of giving. It is evidenced by the vast success of the long-held tradition of harambee (pulling or working together). The harambee spirit has been clearly demonstrated in how communities address social problems both at the family and community level. In recent years, the private sector driven *Kenyans for Kenya Campaign* united Kenyans from all walks of life to raise significant sums of money through mobile phone money transfer platforms, realizing, as at October 2011, over Kshs. 600 Million towards relief and emergency support for Kenyan citizens badly affected by the prolonged drought and famine within a period of eight to 10 weeks¹. The *We are One Campaign*, in response to the *Westgate Mall disaster* also successfully raised

slightly over Kshs.100 Million over just one month, for victims of the terror attack. These are just but two examples of the many thousands of local harambee initiatives that take place in Kenya several times over. This is a clear testament of the successes in pulling resources together.

This generous nature of Kenyans exhibited in the two initiatives highlighted above is indeed laudable and points to the possibility of leveraging on Kenyan's giving nature from ad-hoc and needs-based giving - commonly known as charity, to a more strategic form of giving (also known as philanthropy), which can be defined as:

"...structured donations through which donors seek to achieve specific goals and outcomes for systemic social change."²

This distinction is discussed by Ngondi-Houghton, C and Kingman, A in a chapter titled *The Challenge of Philanthropy in East Africa* in the book, *Giving to Help, Helping to Give*³ as follows:

There is giving whose purpose is to ameliorate suffering or deprivation, or to realize the fulfillment of an immediate pressing need of the intended recipient; and there is the giving whose purpose is to further social causes aimed at transforming society towards restructuring social power grids, enabling people to assert control over their lives, and to participate in their societies in meaningful and effective ways which in turn produce better lives for all. The former is mostly charity, though ameliorative giving can be philanthropy if it is organized, consistent, and linked to structural interventions; and the latter is philanthropy.

¹ <https://www.kenyaredcross.org/PDF/K4K/Kenyans%20for%20Kenya%20Initiative%20lessons%20learnt.pdf>

² www.ubs.com/philanthropy

³ Tade Akin Aina & Bhekinkosi Moyo (Eds.); *Giving to Help, Helping to Give*; Trust Africa; 2013; p.131

Traditionally, Kenyans have manifested spontaneous and sometimes ad-hoc charitable acts of giving based on deeply personal motivations, intended to meet immediate needs of their family members, friends, and even fellow Kenyans. Currently, Kenyan Public Benefit Organisations (PBOs) have turned attention and focus towards other international funding agencies, philanthropists and foreign governments for regular and structured funding for the various development projects that they design and implement across the country. Notwithstanding the great success in the harambee model, Kenyans generally have not been viewed in the past as a long-term and sustainable source of regular and structured local funding that could substitute other international sources in ways that can as well sustain the development programs implemented by Kenyan PBOs.

Whilst looking to other external sources of funding has largely been successful, certain socio-political realities have occasioned a growing public discussion around its sustainability, hence the need to engage more in local fundraising in order to complement the funds raised internationally. There are possibilities that a leadership regime can put a cap on the amount of external funding that a PBO can access for their development work. In addition, foreign donor funding is on a steady decline, partially as a result of global economic challenges and a belief in some quarters that international donor funding has not made significant change that it was intended to make. Against this backdrop, the discussion on local fundraising and leveraging on the already-existing culture of giving (Harambee) in Kenya is one that can no longer be put off.

Understanding How the Tax Systems Might Influence Local Philanthropy

In an effort to understand the current tax provisions with respect to philanthropy, several Kenyan PBOs came together (as a Philanthropy Working Group) to gain a

deeper understanding of the policy and legal landscape and how that relates to the growth and sustainability of philanthropy for development. That effort also highlighted gaps in the knowledge and public appreciation of the environment, hence, making a case for this research. In view of the above, KCDF established a collaborative partnership with Strathmore University (The Strathmore Tax Research Centre, STRC) to carry out a qualitative research targeting private sector, private individuals, PBOs and the government to find answers to key questions such as whether or not citizens had any awareness of the existence of tax and other non-tax incentives that could enhance their giving. Other questions for inquiry were whether or not local PBOs were concerned about local philanthropy and if that was affirmative, what hindrances have they faced in their attempt to utilize that window of opportunity. These questions are organized into four specific objectives as enumerated here below. The study took a period of three months i.e. from February 2014 to April 2014.

Overall Objective of the Research

The overall objective of this research was to enable all interested parties and stakeholders to gain a better understanding of the state of philanthropy in Kenya and the role that tax incentives play in promoting philanthropy in Kenya through an analysis of the awareness, interactions and attitudes of both PBOs and recipients of charitable giving, with existing tax incentives.

Specific Objectives

The specific objectives were to:

- a. Assess whether PBOs view local philanthropy as an important source of funding and whether they consider tax incentives as a critical factor in promoting local philanthropy;
- b. Assess the interest of recipients of charitable donations in applying for tax exemption certificates

and the challenges they face in the application process;

- c. Assess whether, and how, tax incentives motivate organisations and individuals engaged in local philanthropy;
- d. Propose possible practical interventions that can enhance both the supply and demand side of a vibrant philanthropic sector while building on the findings of the three key specific objectives highlighted above.

Research Methodology

The data that forms the basis of the findings of this qualitative research was obtained through surveys administered to PBOs, key informant interviews and focus group discussions. In addition, a stakeholder validation workshop was conducted in order to present and validate the findings of the research. The feedback received from all the data collection methods was incorporated in the final report.

Research Outcomes

Objective 1: Assess whether PBOs view local philanthropy as an important source of funding and whether they deem tax incentives as a critical factor in promoting local philanthropy.

Kenyan Giving Patterns

- The unanimous response to the question - Are Kenyans charitable? received a resounding yes.

Kenyans are philanthropic but you must pick something that speaks to them such as a sick child. People give to emotive things and disasters.”

“Philanthropy is taking place, it’s just the scale that is not wide; most people have given towards fundrais-

ing initiatives (harambees) such as funerals, medical bills and education. You are helping people but what is the scale?”

“There is philanthropy in Kenya but it is different from the West. We come from a culture where we support each other and not necessarily in a structured manner. In the West, there are structures but in Kenya, family and social needs force us to channel resources towards a cause.”

- It was difficult to find any Kenyan Public Benefit Organisation that is sustained, either fully or significantly by locally raised funding. Fewer than five PBOs confirmed that they are significantly sustained by local funding raised from Kenyan citizens or local Kenyan institutions including private sector.
- Many organisations would not be able to run their programs at all or even at a lower scale, if all their foreign-sourced funding was suddenly withdrawn;
- Structured or organized giving to PBOs is not very common among Kenyans. Giving is commonly for deeply personal motivations and happens mostly when the need arises. Structured philanthropy was seen by some of the respondents as a northern practice;
- About half of the Kenyan population lives below the poverty line. It is therefore very possible that each Kenyan has at least one person outside their immediate family, depending on them for various needs. This may be one of the reasons for spontaneous culture of giving; a way of giving that often focuses on present needs or asks. Limited disposal incomes also inhibit structured giving and long term partnership commitments to PBOs;

- Outside their own inner family circles, many Kenyans are unsure about how and whom else to give to. Structures and mechanisms that are easy to access and which people can trust are limited, particularly for those who wish to give;
- Some corporate bodies will only engage in Corporate Social Responsibility in areas that receive the most attention or to deeply moving stories and not necessarily to priority areas of long term need;

Local Fundraising

- An overwhelming majority of PBO's do not view local fundraising as a priority, although they admit that it is inevitable;
- The perception is that local fundraising is very difficult and requires a lot of time and efforts yet, it yields very little result compared to other sources;
- Organisations with large budgets are not eager to engage in local fundraising since they believe that the funds raised locally would not be sufficient to run their programs;
- Organisations with a long history of steady international funding do not view local fundraising as a priority area and consider their current model of funding as more sustainable;
- It is difficult to fundraise locally for certain types of PBOs/causes such as governance, democracy and human rights work, as opposed to issues of children, education and health;
- It is difficult to fundraise locally because of the negative perception people hold of PBO's. Some organisations with questionable accountability history have contributed to public apathy in giving to PBOs.
- Many PBOs admitted to not having a clear understanding on the legal and policy frameworks

governing local fundraising and, did not know how to go about it. The mechanisms and structures for international fundraising are much clearer;

- Organisations that pursue local sources of funding admitted that local fundraising is difficult, time-consuming and usually unsuccessful or yields minimal success. However, the same respondents argued that local fundraising is more sustainable in the long run and becomes easier with time. It requires patience and systematic building of relationships and trust as well as creativity in fundraising by adopting use of Information and Communication Technologies (ICTs) as well as vibrant awareness creation strategies.

Tax as an Incentive

An incentive is something that motivates or encourages a person to take action or to do something specific;

- The belief is that tax incentives are a good way of leveraging on the charitable nature of Kenyans, in order to encourage them to give towards philanthropic causes;
- When respondents were asked what they thought would be the greatest incentive for local philanthropy, the unanimous response was - tax incentives.
- Tax incentives work best where there exists a proper legislative framework and an efficient system of enforcement that discourages abuse by unscrupulous individuals/organisations while assisting entities that support genuine purposes;

Objective 2: Assess the interest of recipients of charitable donations in applying for tax exemption certificates and the challenges they face in the application process

- There is lack of or limited levels of public awareness about the income tax regime that governs PBO's in Kenya;
- Almost all respondents interviewed did not have accurate information, knowledge or understanding of the tax laws governing the philanthropy space in Kenya;
- PBOs either have limited knowledge of the existence of tax exemption certificates and the procedure that should be followed when applying for one; or have applied for the certificate but, more than one year later, they are yet to receive feedback on their application; or they are aware of the legal provisions but they do not want to apply for the tax exemption certificate;
- There appears to be a tense relationship between the government and human rights, democracy and social justice PBOs, which could be a deterrent for application for the exemption certificate;
- Organisations that do not depend on local fundraising are often not interested in applying for the exemption certificate. Organisations that do not already have these tax exemption certificates do not see what benefit they will derive from it;
- Some well-endowed foundations and trusts (e.g. family established foundation) do not seek exemption certificates for purposes of giving tax receipts but rather to increase their investments income;

- Some PBOs are hesitant to apply for the certificate because they fear that the process is difficult, time-consuming, involving and strenuous (the average waiting time ranges from one to two years);
- The law on charitable donations and tax deductions for charitable donations, as presently drafted, is limited and is in dire need of reforms. See the Practical Interventions recommended below;

Objective 3: Assess whether, and how, tax incentives actually motivates organisations and individuals engaged in local philanthropy

- Persons/PBO's engaged in philanthropy are primarily motivated by a passion for the cause;
- Tax incentives assure the donor that the contribution they are making is recognized and respected by the government;
- Charitable donations play the same role as tax; they assist in redistribution of income to improve the well-being of communities and the country;
- Donors do not understand the law as it currently stands; it is viewed as unnecessarily complicated and designed to discourage potential users of the law; Most donors are not aware of the tax receipts that can be utilized to claim tax deductions and they would be hesitant to commence such a process because of government bureaucracy;
- Tax deductions would encourage donors to give significantly more than what they are currently giving;

Objective 4: Propose possible practical interventions that can enhance both the supply and demand side of a vibrant philanthropic sector, building on the findings of the three key specific objectives.

- It emerged that tax incentives should not be dangled like a carrot for potential donors. Philanthropy must be predicated on a passion for the cause rather than a motivation for giving since the incentive may be withdrawn by the government at any time.
- Tax incentives should be perceived as an added benefit, and should go hand in hand with non-tax incentives.

Non-Tax Interventions

- **Charitable Legacies:** This involves appealing to the desire to leave one's mark in the world and to carry forward one's family name in perpetuity by leaving charitable legacies.

People need to be educated about what it means to leave a charitable legacy. It means that your name remains a legacy; that your name will live on."

- **Use of ICT:** Many respondents interviewed felt that PBOs need to make better use of technology to facilitate ease in giving for important causes. MPesa was consistently cited as an excellent platform that has contributed to the success of philanthropy.

"It would be easier to give if the giving was organized and structured", "structures and processes need to be easy, and even if I want to give more, I will not do it because the structures are not friendly..."

- **Credible Institutions:** In order to encourage Kenyans to support PBOs in a structured, consistent and organized manner, they must receive assurances that the organisations that they are supporting are credible, accountable and ethical.

"Kenyans will never give to PBO's until they begin to trust them and understand how they will use their money."

- **Enhanced Partnerships with Government and other Charitable Organisations:** In order to enhance efficiency in local fundraising and ensure that all sectors are adequately supported PBOs and government need to work together in collaborations and partnerships instead of working in isolation.

"Civil society does not receive support from the government hence they focus on their areas of interest instead of government priority areas. This means that many charitable organisations are either duplicating efforts of other CSO's or the efforts of government."

- **Awareness and Strategic Campaigning:** Many Kenyans do not understand the distinction between charity and philanthropy; and what impact the distinction has on long-term transformation of the society. Awareness creation is important in creating a socially conscientious society that understands its responsibility to the most vulnerable.

"Civil society needs to take the lead and spearhead awareness creation and strategic campaigns in order to raise awareness about the work they do, the status of philanthropy in Kenya, the extent of reliance on

international donor funding, the impact of withdrawal of international donor funding on vulnerable groups and the society as a whole, as well as the current status of and opportunities in local fundraising.”

Tax Interventions

- **Enhanced Efficiency at Kenya Revenue Authority (KRA):** Experiences and feedback from many respondents pointed to long and unexplained delays in the processing of applications for tax exemption. It is recommended that PBO’s lobby for efficient services from KRA as well as the simplification of the tax exemption process to enable the Authority carry out its assessment effectively and efficiently.

“I think the exemptions department in KRA is understaffed. Whenever they made an appointment to meet our trustees, they would call to cancel because they were busy elsewhere. We are still waiting.”

- **Awareness Forums for Civil Society and KRA:** Joint awareness forums for both the civil society and KRA are recommended so as to form a synergistic relationship to advance the tax agenda.

“The relevant officers in KRA need to be trained on how civil society programs work so that they know what to look for when they carry out their assessments.”

- **Applying for a Tax Exemption Certificate:** Accessing the existing tax incentives is pegged on possession of a (valid) tax exemption certificate. Charitable organisations must take positive steps towards applying for the certificate if they are to be able to play their part in encouraging local philanthropy.
- A comparative analysis of the Kenyan Income Tax Law and Comparison with the New PBO Act by the Philanthropy Working Group. Some recommendations for possible actions.

INCOME TAX PROVISION	ISSUE OF CONCERN	COMPARISON WITH PBO ACT	RECOMMENDATIONS
<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. • Exemptions under the Customs & Excise (Remission) (Charitable Organ- 	<ul style="list-style-type: none"> • Donations other than cash or cheque are not recognized • The restriction to donations made to NGOs and Societies only. 	<ul style="list-style-type: none"> • Charitable donations under Section 15 (2) (w) of the ITA to be extended to include organisations with PBO status under Section 7 (b) of the PBO Act; • The PBO Regulations should clearly state the criteria for according the special status. 	<ul style="list-style-type: none"> • Extend incentive to donations in kind; • Doing away with Stamp Duty where land is transferred for charitable purposes; • Deductions should apply to all PBOs in line with the Income Tax (Charitable Donations) Rules.

INCOME TAX PROVISION	ISSUE OF CONCERN	COMPARISON WITH PBO ACT	RECOMMENDATIONS
<p>isations) Order, 1999 for organisations registered or exempt from registration under the Societies Act or the Non-Governmental Organisations Corporations Act, 1990</p>			
<ul style="list-style-type: none"> Paragraph 10 First Schedule of the ITA on the Exemption criteria 	<ul style="list-style-type: none"> Finance Act 2012: exemption certificate should be issued within 60 days of lodging application. The process takes longer. 	<ul style="list-style-type: none"> The rules and regulations could remedy the timelines by giving the recourse for the breach of timelines. 	<ul style="list-style-type: none"> Provide realistic timelines; State when an application is deemed accepted; The certificate ought to be automatically deemed as granted if the 60-day timeline is exceeded; Commissioner's powers to revoke a certificate are too wide; Issuance of an interim certificate or letter while the application is under consideration
<ul style="list-style-type: none"> Paragraph 10 of the 1st Schedule: income of an institution that is of a public character is exempt where the income is used solely for the relief of poverty, distress of the public or advancement of education or religion; Gains or profits from business are not exempt unless the business is carried on as part of the actual execution of charitable purposes. 	<ul style="list-style-type: none"> No clear definition of "Public Character"; There is a restriction on the nature of business 	<ul style="list-style-type: none"> Schedule 6 provides possible areas in which a PBO can operate and these should be aligned with ITA; Regulations should use the term "Public Benefit Activity" from PBO Act 	<ul style="list-style-type: none"> Amend Paragraph 10 to provide broader definition of institutions of public character; Remove restriction on the nature of business; Create nexus between terms and provisions in PBO Act and ITA



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