

Philanthropic Freedom Pilot Study: South Africa Country Report

Overall Philanthropic Freedom Score: 3.94

General Background Information on South Africa

- GDP per capita: \$8.070¹
- Population: 48.8 million²
- Percent of population reporting “giving money”: 15%³
- Percent of population reporting “volunteering time”: 19%⁴
- There are three main types of nonprofit organizations: voluntary associations, nonprofit trusts, and non-profit companies. Voluntary associations are the most common and are formed by the associations of three individuals or more.

Key Summary Points

Philanthropic Freedom Score Overview

Category	Score	Key Points
Civil Society Regulation	4.33	<ul style="list-style-type: none"> • The voluntary association is the most popular legal entity being used for setting up a nonprofit because it is fairly quick, inexpensive, and easy. • However, there are practical issues. Setting up and registering a non-profit organization may be met with significant delays (up to six months) as the relevant public institutions are often understaffed. Also, opening a bank account for an association is virtually impossible unless it is registered in terms of the NPO Act and associations waiting on their NPO certificates are thus not able to receive funds into their bank accounts. • The governing body of an organization is allowed to voluntarily dissolve the organization.
Domestic Tax Regulation	4.00	<ul style="list-style-type: none"> • Individuals and corporations can receive a tax deduction of up to 10% of their taxable income. • Donations to organizations that are not approved public benefit organizations (PBOs) are subject to donations tax if a donation exceeds a size limit. • To access the main tax benefits, most organizations must become approved Public Benefit Organization. Not all PBOs can receive tax deductible donations. Some organizations, for example, focusing on activities such as the advancement, promotion or preservation of the arts do not qualify for donor deductible status.
Cross-Border Flows Regulation	3.50	<ul style="list-style-type: none"> • Organizations are not required to obtain government consent in order to receive offshore donations or to channel such donations via a government department. • Some goods donated for the use of cultural, educational, charitable, welfare or youth organizations can obtain a full or partial rebate from VAT. Even though the tax laws have seemingly been relaxed, South Africa enforces exchange controls.
Overall	3.94	<ul style="list-style-type: none"> • The policy environment in South Africa is slightly restrictive to philanthropic activity. While freedom of association is guaranteed and organizations can flourish, the process of starting an organization can be cumbersome.

¹ World Bank. (2012). Data retrieved December 26, 2012, from World Bank Databank.

² Central Intelligence Agency. (2012). Data retrieved December 26, 2012, from The World Factbook 2012.

³ World Giving Index. (2012). Kent, UK: Charities Aid Foundation, 2012.

⁴ Ibid.

Socio-Cultural Background on South Africa's Giving Environment
Provided by Ricardo Wyngaard
South Africa Country Expert
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National research in South Africa has described South Africa as a 'Nation of Givers' and has concluded that the overwhelming majority of those that participated in the study (over 90%) gave through, time, money and in-kind donations. Although South Africa does not rank high in a recent international study, philanthropic activity is growing.

South Africa has a vibrant nonprofit sector and has a rich history of charitable activities. During its repressive history, the nonprofit sector has played a significant part in bringing about democracy in South Africa. Nonprofits exist mostly in the form of small community-based organizations.

South Africans have generally aspired to the spirit of *Ubuntu*. The principle embraces the principle of caring for others. It also means '*I am what I am because of who we all are*'. The spirit of Ubuntu has been present in South African communities and laid the platform for philanthropic activity on individual and organizational level.

CSOs are perceived as an integral part of the South African society. Given the high levels of poverty in South Africa, CSOs have played a significant role in rendering much needed services to marginalized communities. In addition to rendering services, CSOs are also playing an important role in advocating for policy changes in favor of the South African Society.

During March 2013, the Directorate for Nonprofit Organisations indicated that a total number of 101,860 non-profit organisations were registered in terms of the Nonprofit Organisations Act of 1997. The NPO Directorate has since September 2012 made provision for an online registration facility to become registered in terms of the Nonprofit Organisations Act. Early indications have shown that this facility as reduced the waiting period for organisations to become registered in terms of the Nonprofit Organisations Act. It should be kept in mind that registration in terms of the NPO Act is only one of the registration processes involved. The application for tax exemption is separate.

The NPO Directorate has also started to publish information pertaining to the registered organisations on the website of the NPO Directorate at: www.dsd.gov.za. From October 2012 until January 2013 more than 23,000 organisations were de-registered by the Directorate for Nonprofit Organisations which falls under the auspices of the Department of Social Development. In addition, more than 35 000 organisations were marked as 'non-compliant'. In contrast, during the 2011 financial year only 468 organisations were de-registered. All organisations were, in the wake of a public outcry, reinstated and reflected as re-registered during February 2013. Organisations have been given a six-month period to become compliant.

**Scoring of South Africa’s Civil Society Regulation
Provided by Ricardo Wyngaard**

<p>Indicator Question 1: To what extent can individuals form and incorporate the organizations defined?</p>	<p>Score: 4.0</p> <p>South Africa has adopted the major treaties that deal with the right to freedom of association. This right is also enshrined in the South African Constitution. South African law does not prohibit the formation and operation of unregistered groups. Clause 18 of the South African Constitution provides for the protection of the right to freely associate. There are in essence three forms of legal entities for nonprofit organizations operating in South Africa: voluntary associations, nonprofit trusts and nonprofit companies. The voluntary association is the most popular legal entity being used for setting up a nonprofit in South Africa because it is fairly quick, inexpensive, and easy. The Nonprofit Organizations Directorate has reported that voluntary associations represent 95% of the organizations that are voluntarily registered in terms of the Nonprofit Organizations Act (NPO Act). The NPO Act of 1997 is in essence aimed at providing an <i>environment in which nonprofit organizations can flourish</i>.</p> <p>Groups are generally not subjected to frustrating legal impediments when setting up a nonprofit organization. The law is also not prescriptive as to who can be a founder or a certain amount of minimum capital or assets. The law generally makes provision for an appeal procedure in that an applicant may disagree with a decision of the relevant department. However, starting a NPO in South Africa is, in many instances, fraught with <i>practical challenges</i>. For example:</p> <ol style="list-style-type: none"> 1. Setting up and registering a non-profit organization may be met with significant delays (up to six months) as the relevant public institutions are often understaffed. The NPO Act requires the NPO Directorate to register an eligible organization within two months after having received this application – this hardly happens. The NPO Directorate has since September 2012 made provision for an online registration facility to become registered in terms of the Nonprofit Organisations Act. Early indications have shown that this facility has reduced the waiting period for organisations to become registered in terms of the Nonprofit Organisations Act. 2. Opening a bank account for a voluntary association is virtually impossible unless it is registered in terms of the NPO Act. The NPO Directorate recently reported that the Financial Intelligence Centre Act had made NPO registration a condition for financial institutions to open a banking account for such organizations. Voluntary Associations waiting on their NPO certificates are accordingly not able to receive funds into their bank accounts. Such organizations can also not apply for tax exemption pending their registration.
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<p>Indicator Question 2: To what extent are CSOs free to operate without excessive government interference?</p>	<p>Organizations are generally allowed to decide on their internal governance structures and there is no significant interference with the internal governance structure of non-profit organizations. The requirements that are legally imposed are usually aimed at ensuring that the organization is an authentic non-profit organization which is not abused for private gain. Activities of the organization must also be lawful. The NPO Act, for example, lays down a number of requirements that must be adhered to in order for a non-profit organization to be registered in terms of the NPO Act. Its founding document (or the law in terms of which it has been established) must cover the following matters:</p> <ul style="list-style-type: none"> ▪ <i>state that the organization’s income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered;</i> ▪ <i>ensure that the members or office-bearers have no rights in the property or other assets of the organization solely by virtue of their being members or office-bearers;</i> ▪ <i>specify the organizational structures and mechanisms for its governance;</i> ▪ <i>set out the rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings;</i> ▪ <i>set out a procedure by which the organization may be wound up or dissolved; and</i> ▪ <i>provide that, when the organization is being wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another nonprofit organization having similar objectives.</i> <p>Similar requirements are applicable in the Income Tax Act with reference to tax exempt organizations. Organizations are not prohibited from participating in networks and using the Internet and other forms of social media. Reporting requirements are freely available and equally applicable to all organizations.</p>
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Score: 4.0

<p>Indicator Question 3: To what extent is there government discretion in shutting down CSOs?</p>	<p>The governing body of an organization is allowed to voluntarily dissolve the organization. South African law does not generally allow for government discretion in shutting down the activities of an organization. In the event that a government department intends to close down an organization, it would be required to approach a court of law to obtain an order for that purpose.</p> <p>Involuntary termination is usually only provided for in circumstances where an organization may be insolvent. In such situations the Insolvency Act would apply. The insolvency law applies equally to all organizations.</p> <p>Organizations may in certain instances be de-registered when there has been non-compliance with relevant legislation. For example, the NPO Act empowers the Director of NPOs to cancel the registration of an organization that has not complied with a material provision of its constitution; a condition or term of any benefit or allowance conferred on it in terms of the NPO Act; or its reporting requirements as contained in the NPO Act. Before cancelling the registration status of an organization, the Director must first issue a compliance notice to the organization in which it is given opportunity to comply with the relevant provisions. The organization that had its registration cancelled can also lodge an appeal against the decision of the Director. It should be noted that de-registration does not amount to the dissolution of the organization – for many this would however mean that they are not eligible for government funding. In most instances the relevant law would provide for a means to appeal and/or object to such a decision. In the absence of a specific provision, the relevant party would be entitled to approach a court of law as a decision to withdraw registration would be subject to judicial review. (See comment on de-registrations.) It is also noteworthy to point out that the de-registrations happened whilst the Minister of Social Development has failed to appoint an arbitration panel to deal with appeals. The Minister has, according to reports, appointed an arbitration panel during February 2013.</p> <p>Score: 5.0</p>
<p>Average Score on Civil Society Regulation: 4.33</p>	

**Scoring of South Africa’s Domestic Tax Regulation
Provided by Ricardo Wyngaard**

<p>Indicator Question 4: Are there income tax incentives (at national, state, or provincial levels) in the form of credits or deductions for individuals and/or corporations to donate money or charitable gifts?</p>	<p>Score: 3.5</p>	<p>Only approved public benefit organizations (PBOs) with status in terms of section 18A can issue receipts to their donors for donations (in cash or in-kind) received, which will allow the donors to make deductions from their taxable income (up to 10% for individuals and corporations).</p> <p>Donations to organizations (that are not approved PBOs) receive a 20% donations tax on amounts above:</p> <ul style="list-style-type: none"> • R100,000.00 (\$11,000) in respect of individuals, and • R10,000.00 (1,100) in respect of legal entities, except public companies. <p>For example, if an individual makes a donation of R150,000.00 (\$16,800) to an organisation that is not an approved PBO, donations tax in the amount of R10,000.00 (\$1,100) will be levied on that donation, being 20% of the R50,000.00 (\$5,600) extra.</p> <p><i>(This question did not require a score by the country expert; CGP applied a score of 3.5. On the positive side, tax deductions are available for donations. On the negative, there are low ceilings and extra taxes on donations made to unapproved organizations.)</i></p>
<p>Indicator Question 5: To what extent is the tax system favorable to making charitable donations?</p>	<p>Score: 4.0</p>	<p>Only approved public benefit organizations (PBOs) with status in terms of section 18A can issue receipts to their donors for donations (in cash or in-kind) received which will allow the donors to make deductions from their taxable income (up to ten percent for individuals and corporations). Section 18A of the Income Tax Act allows taxpayers to make a deduction from their taxable income when they make donations to certain organizations. A donation will only qualify for a deduction if it complies with the following requirements listed under section 18A:</p> <ol style="list-style-type: none"> 1. The donation must be made to an approved PBO that has status under section 18A (commonly referred to as donor deductible status). 2. The PBO must use the donation to carry out the allowed public benefit activities. Alternatively, the PBO must provide funds to a PBO carrying on such public benefit activities. 3. The donation must have been made bona fide and should not be a payment for services which the organization has rendered to the taxpayer. 4. The donation can either be in cash or in-kind, but not in the form of a service. 5. The donation cannot exceed ten percent of the taxpayer’s taxable income. If it exceeds ten percent the excess amount will not qualify for tax deduction.

<p>Indicator Question 6: Do CSOs receive tax exemptions in the form of property tax exemptions, income tax exemptions, or others? If so, what are these exemptions?</p>	<p>Non-profit organizations can access a number of tax benefits in terms of the Income Tax Act. The main benefits available to South African NPOs are: <i>First</i>, being fully exempted from paying income tax if it carries on none or limited trading activities and being partially exempted from paying income tax in situations where its trading income exceed the limitations contained in Section 10 (1) (cN). <i>Second</i>, being able to receive donor deductible contributions. Only approved public benefit organizations (PBOs) with status in terms of section 18A can issue receipts to their donors for donations (in cash or in-kind) received, which will allow the donors to make deductions from their taxable income (up to ten percent for individuals and corporations). <i>Third</i>, accessing other tax benefits that are reliant on the organization’s PBO status. These include exemptions from transfer duty, estate duty, capital gains tax, donations tax, skills development levy and dividends tax.</p> <p><i>Capital Gains Tax:</i> PBOs are exempted from the payment of capital gains tax when disposing of an asset. This exemption is not automatic. The disposed asset should not have been used to carry on business activities unless specifically allowed for in terms of the Income Tax Act.</p> <p><i>Transfer duty:</i> PBOs may be exempted from the payment of transfer duty when acquiring immovable property. This exemption is also not automatic. A specific application must be made to access this benefit and the property must be used solely or substantially to carry on public benefit activities.</p> <p><i>Estate duty:</i> Property bequeathed to PBOs is exempted from estate duty.</p> <p><i>Property Rates:</i> PBOs are generally offered rebates on the payment of property rates.</p> <p><i>(This question did not require a score by the country expert; CGP applied a score of 4.5. On the positive, there is a wide range of tax exemptions available to CSOs. On the negative, the some organizations to not qualify for this status.)</i></p>
<p>Indicator Question 7: To what extent is the tax system favorable to CSOs in receiving charitable donations?</p>	<p>To access the main tax benefits, most organizations must become approved PBOs. An organization’s approval as a PBO is the main gateway to access the benefits listed above. Organizations must carry on one or more public benefit activities as defined in the Income Tax Act. PBOs must submit annual income tax returns (within a period of twelve months after their financial year. PBOs are only in few instances required to submit audited financial statements. To access the main tax benefits, most organizations must become approved PBOs. An organization’s approval as a PBO is the main gateway to access the benefits listed above.</p> <p>Not all PBOs can receive tax deductible donations. Some organizations, for example, focusing on activities such as the advancement, promotion or preservation of the arts, culture or customs and the provision of youth leadership or development programs do not qualify for donor deductible status.</p>
<p>Average Score on Domestic Tax Policy: 4.00</p>	

**Scoring of South Africa's Cross-Border Flows Regulation
Provided by Ricardo Wyngaard**

<p>Indicator Question 8: Are there costs/taxes on cross-border philanthropic cash and/or in-kind donations (e.g. customs, duties, VAT, etc)? If so, what are these costs?</p>	<p>The Customs and Excise Act of 1964 does make provision for the general rebate of custom duties on imported goods for NPOs. Provisions are however made in terms of Schedule No. 4 to the Customs and Excise Act, 1964, for the rebate (partial or full) of customs duties on certain specified imported goods, subject to certain conditions. This would include situations where some goods are used for cultural, educational, charitable, welfare or youth organizations.</p> <p>For example, goods for disabled persons or the improvement of the lives of indigent persons, including goods specially designed for use by persons with physical or mental defects would be subject to a full rebate, provided that the recipient can produce a certificate from a specified organization, e.g. South African National Council for the Blind, South African National Council for the Deaf and the South African National Council for Mental Health. These certificates must be endorsed by the International Trade Administration Commission. The goods imported must be for the exclusive use by persons with disabilities.</p> <p>Customs duty is ordinarily calculated as a percentage on the value of the goods which can range from 5 to 20%. Organizations are not required to obtain government consent in order to receive offshore donations or to channel such donations via a government department.</p> <p><i>(While this question does not require a score by the country expert, CGP applied a score of 4.0. On the positive side, it is fairly easy to receive donations from abroad and the rebate of custom duties. On the negative side, donations to organizations operating mainly outside of South Africa are not eligible for deductions.)</i></p> <p>Score: 4.0</p>
<p>Indicator Question 9: To what extent is the legal regulatory environment favorable to cross-border flows impeded?</p>	<p>South Africa's tax laws are not restrictive in relation to PBOs operating outside of South Africa. The Income Act used to require PBOs to conduct at least 85% of their public benefit activities (whether calculated through time or money) within the borders of South Africa. This requirement was abandoned during 2006 and PBOs are now generally free to conduct their activities outside the country's border. A PBO can only obtain donor deductible status if it carries at least some of its public benefit activities in South Africa and in situations where it carries on public benefit activities both inside and outside the Republic of South Africa.</p> <p>Even though the tax laws have seemingly been relaxed, South Africa enforces exchange controls. The restrictions have, in general terms, been relaxed in recent years. The regulations ask that: applications by official or recognized charitable, religious or educational bodies for the transfer of funds to such bodies in countries outside the Common Monetary Area (Namibia, Lesotho, South Africa and Swaziland) should be submitted to the Financial Surveillance Department with full particulars of the underlying request.</p> <p>Score: 3.0</p>
<p align="center">Average Score on Cross-Border Flows Regulation: 3.50</p>	

Overall Philanthropic Freedom Score*: 3.94

* This score reflects equal weighting of the three categories described above.