

# Nigeria

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## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Foundation, Cooperative, Corporation, Limited Liability Company, Company Limited by Guarantee, Trust, Society, NGOs

**Five main social issues addressed by these organizations:** Higher Education, Primary and High School Education, Health and Medical Research, Basic Needs, Youth and Family

**Average time established by law to register a philanthropic organization:** 31-60 days

**Average cost for registering a philanthropic organization:** US \$50 - \$300

The low end for registering cooperatives and associations is US \$50 and high end for registering nonprofits is US \$300

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government, and Local Government

Different groups can register at different levels.

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	3.7	3.0	3.0	3.0	4.0	3.33

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 3.0</b>
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The Nigerian constitution permits people to register POs. All POs are required to register with different bodies at the local, state and federal levels. These can be Cooperatives, Companies limited by Guarantee or Incorporated Trustees. Although a clear, closed list of reasonable documentation is required for registration, the application process is often bureaucratic with inconsistencies about the duration for approval across the 36 States of the country. The costs also varies from state to state. POs that can afford it use the services of a lawyer to complete the process and interact with the regulatory authorities. For example, most social enterprises and Foundations register as nonprofit, nongovernmental organizations, under the Registration of Incorporated Trustees with the Corporate Affairs Commission. POs are required to provide three completed application forms; a formal application letter; two copies of the constitution of the organization; original newspaper publications; minutes of meeting containing the appointment of the trustees, which should be signed by the Chairman and Secretary of board (minutes must include the voting procedure and attendance); two passport photographs of trustees (applicants); NGN 20,000 (approximately US \$50) bank draft payable in Abuja in favor of the Corporate Affairs Commission (CAC). The CAC has the discretion to approve the registration based on the applicant's satisfaction of the requirements. The length of time for approval, however, is arbitrary.

### Question 2: To what extent are POs free to operate without excessive government interference?

<b>Score: 4.0</b>
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POs are free to structure and govern their organizations, granted by the Nigerian Constitution and the Companies and Allied Matters Act. They are also free to employ staff. However, members of the board cannot hold staff positions. POs are allowed to engage in activities as long as they do not violate the Nigerian Criminal Code Act, applicable in the southern region. Restrictions are placed on any unlawful activity, such as levying war; interfering with, or resisting, or encouraging interference with or resistance to the administration of the law; or disturbing or encouraging the disturbance of peace and order in any part of Nigeria (FRN, Nigerian Criminal Code Act 62).

While there are no restrictions on POs carrying out political activities, the president has the right to issue an order declaring a PO unlawful according to the constitution: "dangerous to the good government of Nigeria or of any part thereof." For example, the organization Movement for the Actualization of the Sovereign State of Biafra (MASSOB) was condemned and denounced by former President Olusegun Obasanjo. POs that encourage same-sex activities are prohibited since gay, lesbian and transgender societies and organizations are unlawful and cannot be registered as a result of the Same-Sex (prohibition) Act, which was signed into law in January 2014 by President

Goodluck Jonathan (2014). POs can collaborate freely with colleagues in civil society organizations, business and government sectors both locally and internationally. Government bodies usually require adherence to requirements particular to such bodies. However, the National Planning Commission (NPC) coordinates and monitors multilateral and bilateral co-operations among POs. (ICNL, 2017). Additionally, donors are also required to register with the NPC.

**Question 3: To what extent is there government discretion in shutting down POs?**

**Score: 4.0**

According to the statute, a PO can voluntarily terminate its activities with or without government approval as provided by Section 691 (2 a, b & d); a government entity can involuntarily terminate a PO as provided by Section 691 (2 c). Termination of the PO may be subject to judicial supervision as provided by 608 (1 & 3). The section of the statute is outlined below: Section 608 of the Companies and Allied Matters Act, [CAMA, section (2) (c)] LFN 2004, provides that:

1. An incorporated trustee (i.e. PO) can be dissolved by the court on a petition brought for that purpose by: a) A governing body or council; b) One or more trustees; c) Members of the association consisting not less than fifty per cent of the total membership; d) The Commission
2. The grounds on which the corporate body may be dissolved are: a) That the aims and objects for which it was established have been fully realized and no useful purpose would be served by keeping the corporation alive; b) That the body corporate is formed to exist for a specified period and that period has expired and it is not necessary for it to continue to exist; c) That all the aims and objects of the association have become illegal or otherwise contrary to public policy; and d) That it is just and equitable in all the circumstances that the body corporate be dissolved.
3. At the hearing, all persons whose interest or rights may, in the opinion of the court, be affected by the dissolution shall be put on notice.

## **II. Domestic Tax and Fiscal Issues**

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

**Score: 3.0**

In Nigeria, organizations donating to certain institutions are granted a tax-deductible donation not exceeding 10 percent of their profits for that year as ascertained before any deduction of such donations is made and must not be of capital nature as stated in Companies Income Tax Act (CITA). According to CITA, "Institutions to which tax deductible donations may be made include the ecclesiastical, charitable, benevolent, educational and scientific institutions, established in Nigeria, which are specified in the Fifth Schedule to the Companies Income Tax Act. [CITA 23(1) (c)]"; for example any government-recognized educational institution or hospital, NGOs like the Boys Scouts and Girls Guide, and so on. An amendment to the act in 2011 expanded the range of activities for which companies donating to organizations engaged in them for nonprofit purposes will be tax deductible.

They include the following (CITA, Amendment of the Fifth Schedule to Companies Income Tax Act, 2011):

- Women empowerment and development or the promotion or defense of human rights or re-orientation, rehabilitation, welfare support service for orphans, widows, physically challenged, refugees and all categories of persons that may require social or economic rehabilitation and transformation.
- Youth empowerment and development.
- Leadership and resource development or for promotion of National Unity and Patriotism, or the promotion of Social and Economic Development.
- Activities that promote the prevention and control of accidents.
- Promotion of information system development and awareness. Creation of awareness for transparency in governance and electoral processes.
- Museum development and promotion of sports, arts and culture, and rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development.
- Any professional body established under an Act of the National Assembly for the regulation and practice of the profession. There are no legal limits on the amount that can be donated.

In reference to individual donations, “the laws of Nigeria do not provide for the deductibility of donations made by individuals to Nigerian NPOs” (Council on Foundations, 2017).

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

<b>Score: 3.0</b>
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Fourteen types of income are tax-exempt according to Section 19 of the CITA (CITA, Company Income Tax Act, Section 19). Some include: a) the profits of any statutory or friendly society, in so far as such profits are not derived from a trade or business carried on by such society; b) the profit of any company being a cooperative society registered under any enactment or law relating to cooperative societies, not being profits from any trade or business carried on by that company other than cooperative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority; c) the profits of any company engaged in ecclesiastical, charitable, or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company; d) the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose; e) the profits of a company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union; f) interest received by a company from the Federal savings Bank (defunct); g) dividends derived by a company from another company incorporated in Nigeria. Thus, POs are generally exempt from Companies Income Tax. These include income in the form of grants, donations, endowments and gifts, since it is assumed that the earned income is not from engaging in for profit activities such as business or investments. It is stated as such in the CITA Cap C21.LFN 2004, “the profit of any statutory, charitable, ecclesiastical, educational or other similar associations are exempted from companies income tax obligation provided such profits are not derived from any trade or business carried on by such an organization or association.”

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

#### **Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

<b>Score: 3.0</b>
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PO's are not legally restricted from transferring money across borders but such transfers are governed by the following legislation:

The Money Laundering (Prohibition) Act 2011 (and the amendment to the Act in 2012) that guides all entities on transferring money. It states that all transfers have to abide by the provisions. Money laundering, according to the Act is, when "any person in or outside Nigeria directly or indirectly conceals or disguises the origin of; converts or transfers; removes from the jurisdiction; acquires, uses, retains or takes possession or control of; any fund or property, knowingly or which he/she should reasonably have known that such fund or property is, or forms part of the proceeds of an unlawful act". Among other things, the term "unlawful act" includes supporting terrorism, human trafficking, sexual exploitation of children, and drug trafficking.

The Money Laundering (Prohibition) Act 2011 also makes it illegal for any individual to accept or make any cash payment that exceeds NGN 5 million (US \$13,870). This means that every cash transaction over NGN 5 million (US \$13,870) must be done via a financial institution. Organizations are required to register with the Special Control Unit against Money Laundering and report their financial transactions over US \$1,000 to the agency. The act also states, "Any individual, who is transporting cash or negotiable instruments in excess of US \$10,000, or its equivalent must be declared to the Nigerian Customs Service." No declaration of the funds or false declaration is an offence that is punished upon conviction by the individual forfeiting the funds in question, or to imprisonment of not less than 2 years or to both.

#### **Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

<b>Score: 3.0</b>
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The money laundering laws outlined in Question Six apply to receiving cross-border donations. The federal government mandates that all funds received by a corporate body from a foreign country that exceeds US \$10,000 be reported to the Central Bank of Nigeria (CBN) and the Securities and Exchange Commission within 7 days from the date of the transaction. The report is expected to

contain the nature and amount of the transfer, the names and addresses of the sender and receiver. If cash money is to be sent to Nigeria, it must be reported to the Nigerian Customs service. (FRN, Money Laundering (Prohibition) Act, 2011). Financial institutions and designated non-financial institutions are required to identify their customers and monitor transactions. Corporate bodies are required to provide proof of their identity via their certificate of incorporation, along with other valid official documents. Under the Act, two categories of goods are exempt from import duty.

- A. Goods approved from the presidency through the Finance Minister as necessary and appropriate for equipping the members (including their officers) of a nonprofit voluntary organization that enjoys international recognition.
- B. It is approved by the Minister that adequate arrangements have been made for the legitimate use of the goods are necessary and appropriate for the successful prosecution of the aims and objectives of the organization and for donation to charity if goods are provided or donated on humanitarian grounds. The donor has to be: 1) an established body recognized by the Government of the country of the place of establishment; 2) or a person or body approved by the Federal Government of Nigeria or approved by a person authorized by the Government on his behalf. In order to benefit from the fiscal incentives for receiving cross-border donations, POs must go through an approval process, beginning with a letter of request for exemptions.

#### IV. Political and Governance Environment

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question8: To what extent is the political and governance environment favorable for philanthropy?**

<b>Score: 3.0</b>
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The federal government has demonstrated uneven support to POs. The Enabling Environment National Assessment report states that the relationship between the government and civil society organizations are not as rosy as it should be. (CIVICUS, 2015). It further states that a civil society - rapid assessment index (CSI-RA) conducted in Nigeria in 2013 revealed an improved understanding and collaboration between the government and civil society organizations (CSOs). The law also requires CSO representatives to be members of some government committees; however, this has not led to CSOs improving their relationship with the government, mainly because, the government chooses the representatives and it causes credibility issues. POs are given opportunities to participate in policy formulations of some government agencies. This is restricted to a few CSOs and, is based on their attendance at workshops and conferences organized by the government.

In 2014, the National Conference report endorsed a Civil Society Consultation Act. Some of the recommendations were:

1. Formalize some level of civic power within the three tiers of government in Nigeria;
2. Strengthen the link between citizen rights to participate in governance and actual participation itself;
3. Mandate that government put in place structures and programs for consulting and dialoguing with citizen organizations;



4. Define the level of civil society representation and participation in public regulatory bodies;
5. Provide in clear terms the way in which government must involve civil society in drawing up the budget and implementing it;
6. Provide for an annual General Assembly between government and civil society or an annual National Conference between civil society and government.

The introduction of the Bill to Regulate the Acceptance and Utilization of Financial/Material Contributions of Donor Agencies to Voluntary Organizations caused significant tensions between the government and civil society. The bill seeks to regulate the activities and finances of the most vibrant section of POs - NGOs. POs have expressed their opposition to the bill via protests in the media.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 3.0**

The Nigerian government has not created structures to support POs aside from the tax exemption system mentioned in previous questions. There are close collaborations between the government and donors, particularly bi- and multilateral donors to implement large-scale projects such as fighting malaria, addressing power supply, post-conflict reconstruction and infrastructural projects. Presently, there are no laws that legislate donor funding.

The International Cooperation Department of the National Planning Commission (NPC) is charged with managing bilateral cooperation and assistance programs, of which some are donor-funded. POs that receive funds are required to submit audited annual financial reports to the NPC. However, the NGO Regulatory Bill, fiercely opposed by the nonprofit sector, will lead to more scrutiny and limitations on donor funding too. Clauses 25(c) and 29(1) of the Act are proposing that funds pledged by donors must be disclosed before the commencement of the projects' implementation, along with the mode of disbursement and transfers from overseas donors must be channeled through the "normal banking system".

## **V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

**Score: 4.0**

Nigeria is a multi-ethnic and multi-cultural society with each of its 250 ethnic groups having distinct cultural practices. However, one shared practice across all ethnic groups is the culture of giving. Historically, across Nigerian community-based self-help groups exist that work on social initiatives using resources raised from the community.

Contemporary Nigerian communities have preserved these practices and are adapting to modern philanthropic practices and global influences. For example, POs in urban centers adopt western structures in executing the same historically communal responsibilities. Indeed, according to the Civil Society Index – Rapid Assessment report conducted by the Nigeria Network of NGOs, in 2012

individual donations were the most important and most reliable funding sources for POs. (CIVICUS, 2015).

## **VI. Future of Philanthropy**

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

The growth of formalized and structured philanthropy is on the rise in Nigeria with individuals and corporations establishing philanthropic organizations at local, state and federal levels. Hitherto, the government has not restricted the operations of POs to an extent that makes them ineffective. However, the proposed NGO Regulatory Bill (2014) suggests an intention by some legislators to limit the PO's activities and make them strictly accountable to government.

The Bill states that projects and activities of NGOs are subject to the approval of the relevant Ministry and registered with the Commission (Clause 26(1)). The Bill also proposes that the National Planning Commission (NPC) be empowered to pay unscheduled visits to the NGOs and witness 'randomly selected activities of field operation without notice to the organization.' The aim of the monitoring is to ascertain that the implementation is in accordance to the project/work plan. Philanthropy in Nigeria is mostly not supported by empirical research and this makes the availability of literature that can inform philanthropic studies scarce and dispersed. This situation can be attributed to the general ignorance of academics toward philanthropy's role in society being worthy of rigorous research. The future of philanthropy in Nigeria requires that academic institutions establish research centers on philanthropy or support philanthropic studies.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- The introduction of the NGO Regulatory Bill in 2014;
- The leadership role played by foundations established by high net worth individuals that have placed homegrown grant making foundations on the continental landscape. For example, Tony Elumelu, TY Danjuma and Dangote Foundations; and
- The growth and recognition of social entrepreneurship as a defined sector (though not legal recognition) over the last 3 years.

### **Future development trends in the philanthropic landscape**

The growth of social entrepreneurship and impact investment in Nigeria present promising opportunities for philanthropy in the country. Homegrown social entrepreneurs are innovating solutions to a myriad of problems in the country and creating eco-systems of POs addressing intractable issues.



### **Three key recommendations to improve the environment for philanthropy**

- There should be more coherence in the process of registering POs;
- Credible, transparent and accountable platforms for POs to engage government and influence policies should be encouraged and supported at all levels of governance; and
- Proper reporting and documentation of the impact and contributions of POs in Nigeria should be done. This will facilitate a better understanding of the role and importance of POs in the national growth, development and governance. This reporting process might also inculcate a culture of accountability.