

## **ANALYSIS OF THE PROVISIONS OF THE PUBLIC BENEFIT ORGANIZATIONS ACT 2013 (PBO ACT)**

### **1. INTRODUCTION.**

The PBO Act was assented on 14<sup>th</sup> January 2013 which sought to repeal the Non-Governmental Organization (NGO) Coordination Act (1990) due to its inadequacies. The Act had however not been operationalized due to non-gazettement until recently, 14<sup>th</sup> May 2024 through legal notice No. 78 of the Kenya Gazette Supplement No. 100.

#### **■ What is a Public Benefit Organization (PBO)?**

It is a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan and non-profit making.

#### **■ What are the features of a PBO entity?**

- i. It can either be organized and operated locally, nationally or internationally
- ii. It engages in public benefit activities in any of the areas set out in the sixth schedule.
- iii. It is registered as such by the Authority.

#### **■ What is not considered as a PBO?**

- i. A trade union within the meaning of the Labour Relations Act [Cap. 233](#)
- ii. A public body established by or under any written law
- iii. A political party within the meaning of the Political Parties Act (Cap. 7D)
- iv. A religious organization which is primarily devoted to religious teaching or worship
- v. A society within the meaning of the Societies Act ([Cap. 108](#))
- vi. A co-operative society within the meaning of the Co-operative Societies Act ([Cap. 469](#))
- vii. A Sacco society within the meaning of the Sacco Societies Act (Cap. 490B)
- viii. A micro-finance institution within the meaning of the Micro-Finance Institutions Act ([Cap. 493C](#))
- ix. A community-based organization whose objective include the direct benefit of its members

## ■ What is the purpose of the PBO Act?

The Act provides guidelines for the establishment and operation of PBOs by creating an administrative and regulatory framework within which PBOs can conduct their affairs.

The main objectives of the Act are;

- Creating a conducive environment for the growth and operations of the PBOs
- Promoting the development of self-regulation among PBOs
- Facilitating mechanisms for government collaboration with PBOs, including funding of their activities and involvement of PBOs in the implementation of government projects

- Facilitating a constructive and principled collaboration between PBOs, the government, business, donors and other actors in order to advance public interest;
- Promoting freedoms of expression, association, and peaceful assembly by allowing PBOs to join or leave PBO forums and expressing themselves freely through advocacy, picketing and peaceful assemblies.

## 2. Registration of PBOs

### ■ Did you know of the following provisions in section 6 of the PBO Act?

- i. A PBO shall be registered under the PBO Act for it to enjoy the benefits that accrue from the Act
- ii. No organization that is registered under any other law in Kenya shall be registered under the PBO Act while its registration under that other law subsists. This therefore means that an organization that is registered under another law has to have the registration cancelled before it can register under the PBO Act.
- iii. Where an organization is registered under the PBO Act and under any other law, that organization shall be deemed registered under the PBO Act and that other registration shall be deemed invalid. The implication of this is that, registration under the PBO Act supersedes.
- iv. Where and organization is registered under any other written law in Kenya or not registered under any other written law in Kenya, the Authority has powers to bestow on that organiza-

tion the status of a PBO under section 7 of the Act.

### ■ What are the registration requirements for a PBO?

**Section 8 of the Act provides for the criteria for registration and that the application for registration shall be accompanied by the following;**

- i. A copy of the constitution or other constitutive document of the PBO
- ii. Names and addresses of the founders of the PBO
- iii. The public benefit purposes and the principal activities that the PBO shall engage in.
- iv. The postal and physical address of the principal place of doing business of the PBO
- v. The prescribed fee

### a) What is the process of registration?

- i. Once the Authority has received the application for registration, it will review it to and make a determination to register or to reject the application.
- ii. The Authority shall within sixty days after receipt of the application for registration, register the organization as a PBO if it satisfied that the application meets the registration requirements of the PBO Act. [Section 9 (1)]
- iii. If the Authority is not satisfied that the application complies with the registration requirements, it shall notify the applicant in writing giving reasons for the decision and informing the applicant of the duration, which shall be a period not exceeding thirty days from the date of the notice, during which to comply with those requirements. [Section 9 (2)]
- iv. If, upon the expiry of sixty days from the date a PBO made an application for registration and no decision has been made by the Authority, the PBO may apply to the PBOs Dispute Tribunal to compel the Authority to issue to it a certificate of registration or communicate to the organization that the registration has been denied, together with the reasons for refusal. (Section 12)

### ■ Can you appeal the decision of the Authority on the refusal to register?

Yes.

- i. An applicant who is aggrieved by a decision of the Authority may, within thirty days of receiving a written notice of the decision, appeal to the tribunal against the decision of the Authority. [Section 17(3)]
- ii. The tribunal shall, upon receipt of an appeal, consider and determine the appeal within sixty days from the date of receiving the appeal. [Section 17(4)]

## ■ What are the benefits of registering an organization as a PBO

The Act in the Second Schedule provides for the benefits as follows;

- i) Indirect government support in the form of exemptions from;
  - income tax on income received from membership subscriptions and any donations or grants
  - income tax on income acquired from the active conduct of income producing activities if the income is wholly used to support the public benefit purposes for which the organization was established
  - tax on interest and dividends on investments and gains earned on assets or the sale of assets
  - stamp duty
  - court fees.
- ii) Preferential treatment under value added tax (VAT), and customs duties in relation to imported goods or services that are used to further their public benefit purposes
- iii) Incentives for donations by legal and natural persons;
- iv) Employment tax preferences
- v) Special tax incentives for donations to form endowments, prudent investment policies, *etc.*
- vi) Provision of direct government financing for PBOs that partner with the government, via budget subsidies, grants for specific purposes, and contracts to perform certain work
- vii) Preferential treatment in public procurement procedures and bidding for contracts.
- viii) Provision of information to enable PBOs to contribute effectively to the policy processes.
- ix) Access to training courses that are relevant to PBOs and offered by government institutions.

### 3. How does that the Act promote the development of self-regulation among PBOs?

#### ■ Establishing PBO Forums

The Act in section 20 authorizes PBOs to join and participate in forming a forum of PBOs and participate in its lawful activities.

#### ■ Establishing the National PBO Federation

The Act in section 21 establishes the National Federation of PBOs, an umbrella organization of all PBOs registered under the Act and the self-regulation forums of PBOs recognized by the Authority. The objective of the federation is to promote self-regulation through coordinating the self-regulation forums

## ■ Providing for the ethical principles and Internal self-regulation for PBOs.

The Act in section 25(3) mandates the governing body of a PBO to establish clear and unambiguous guidelines on the conduct and operations of the organization, including guidelines to ensure that the personal interests of its members, the staff and volunteers do not conflict with those of the organization. In addition, it provides for ethical principles in section 27 which guides the PBO forums to develop self-regulation mechanisms such as Codes of Conduct.

## ■ Promotion of Self-Regulation by the Authority

The Authority promotes self-regulation by encouraging PBO umbrella associations to develop and publish codes of conduct applicable to members, governing body officials, staff and volunteers of the public benefit organizations. Moreover, it shall facilitate training on self-regulation of PBOs to deepen the knowledge and strengthen the capacity of PBOs in section 28.

### 4. Which body regulates PBOs in Kenya?

The Act in section 32 establishes the **PBO Regulatory Authority** whose mandate is among others to register and deregister PBOs, maintain a register of PBOs and interpret the national policy on PBOs so as to assist in its smooth implementation.

### 5. What is the mechanism for dispute resolution in the PBO Act?

- i. The Act in Section 50 establishes the **PBO Dispute Tribunal** whose jurisdiction is to hear and determine complaints arising out of any breach of the provisions of the PBO Act. In addition, it can hear and determine any matter or appeal made to it pursuant to the provisions of the PBO Act. Section 51 however, imposes a caveat on the tribunal's jurisdiction over criminal matters.
- ii. The tribunal has powers to confirm, set aside, vary or quash the order or decision in question. It can also, require the Authority to revise or review its decision.
- iii. The decision made by the tribunal shall be final and binding on the parties unless judicial review commences within fourteen days from the date of the Tribunal's decision. Any party to the review aggrieved by the decision of the tribunal may appeal to the High Court and the decision of the High Court shall be final.

### 6. What are the transitional directions for NGOs registered by the Repealed Act?

#### ■ Registration

- i. Clause 5 of the Second Schedule provides that every NGO registered under the NGO Act (now repealed) shall, be deemed to be registered as a PBO under the PBO Act. NGOs registered under a different regime shall have up to one year from 14<sup>th</sup> May 2024 to register as a PBO



under the PBO Act.

- ii. An NGO registered under a different regime that fails to seek registration under the PBO Act, after specific notice to it and a reasonable opportunity to do so, shall cease to have a PBO status or any similar or equivalent status thirty days after the expiration of the specific notice period, unless it has by then, filed its application to be registered as a PBO.
- ii. An NGO that was exempted from registration under the provisions of the former Act shall within three months from the PBO Act commencement date of 14<sup>th</sup> May 2024, apply for registration.

#### ■ **The PBO Regulatory Authority**

- i. The administrative decisions made by the former board or by the Cabinet Secretary which were in force before 14<sup>th</sup> May 2024 shall, on or after the date, have force as if they were directions made by the Authority or the Cabinet Secretary under this Act.
- ii. All assets and liabilities which were vested in the former board before 14<sup>th</sup> May 2024 shall vest in the Authority.
- iii. A person, other than a public officer, who was a member of the former board before 14<sup>th</sup> May 2024 shall be deemed to be a member of the board of the Authority and shall continue in office as if appointed under the PBO Act for the remainder of their term and shall be eligible for re-appointment once.
- iv. Members of the governing board of the NGO Council in office before 14<sup>th</sup> May 2024 shall continue in office as members of the governing board of the Federation under the PBO Act as if elected to office but only for the remainder of their term and shall be eligible for election to the federation board.