

THE PUBLIC BENEFIT ORGANISATIONS BILL, 2011

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THE PUBLIC BENEFIT ORGANISATIONS BILL, 2011

A Bill for

AN ACT of Parliament to provide for the establishment and operation of public benefit organisations, to provide for their registration; to establish an administrative and regulatory framework within which public benefit organisations can conduct their affairs and for connected purposes.

PREAMBLE

Recognizing the important role that public benefit organizations play in serving the public good, supporting the development of pluralism, social cohesion and tolerance within society; promoting democracy, respect for the rule of law, and providing accountability mechanisms that can contribute to improved governance;

Conscious that government, business or public benefit organisations on their own, do not have the capability to meet all the challenges that society faces;

Cognizant that the Government of Kenya is the primary provider of basic services and that public benefit organisations are increasingly involved in complementing the local and national government in all spheres of public service delivery;

Perceptive that the realization of Vision 2030 will depend on the contribution of not only the public and private sectors, but civil society and in particular, public benefit organizations as well;

Recognizing that civil society, including public benefit organizations, comprises a major economic sector that employs almost half as many people as the public sector;

Mindful that effective and efficient self-regulation is the basic foundation for an effective working civil society sector and keen to ensure that public benefit organizations maintain high standards of governance, transparency and accountability;

Observant that the efforts to establish an enabling environment for public benefit organizations have been ongoing and that the NGO Coordination Act 1990 is in need of revision as it does not provide an adequate regulatory and institutional framework for public benefit organizations;

Cognizant that laws permitting public benefit organizations to exist and operate freely are indispensable to the full and meaningful implementation of the freedoms of association, expression, and peaceful assembly in the Constitution, as well as increased development effectiveness through better service delivery, and empowerment of Kenyans;

the Parliament of Kenya **ENACTED**, as follows—

PART I — PRELIMINARY

Short title and commencement. **1.** This Act may be cited as the Public Benefit Organisations Act, 2011 and shall come into operation on such date as the Minister may by notice in the gazette appoint.

Interpretation. **2.** (1) In this Act, unless the context otherwise requires—

“Authorized Agent” refers to a legal

representative, who is a Kenyan citizen, authorized to receive official summonses, notices and inquiries on behalf of an international non-governmental organization.

“Civil Society” refers to the wide array of formal or informal groups that operate in the realm between the individual and the state; are formed to promote the interests of their members, a portion of the public or the public at large; are involved in a wide range of activities ranging from specific community-based to international ones; and include Non-Governmental Organisations (NGOs), Grassroots organisations (*Harambee* groups, Community Based Organizations, welfare and neighbourhood organisations, kinship and other traditional groups); Trusts and Foundations; Professional clubs and associations; trade unions, cooperatives, not-for-profit companies, social movements and networks, faith-based and religious groups, among other socio-economic groupings.

“Commission” means the Public Benefit Organisations Registration Commission established under section 25;

"the Gazette" means the Kenya Gazette published by authority of the Government of Kenya, and includes any supplement thereto;

“International Non-Governmental Organization (INGO) refers to an non-governmental organization legally-registered outside Kenya, which operates across two or more countries, and does not distribute any net earnings or profits but uses assets, earnings and profits to support the not-for-profit purposes of the organization.

“Minister” means the Minister for the time being responsible for matters relating to planning and national development;

“Public Benefit Activity” is any lawful activity that supports or promotes public benefit by enhancing or promoting the legitimate economic, environmental, social or cultural development or protecting the environment or lobbying or advocating on issues of general

public interest or the interest or well-being of the general public or a group of individuals or organizations;

“Public Benefit Organisation” (PBO) means a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit, and which is locally, nationally or internationally:

(a) organized and operated to engage in Public Benefit Activities; and

(b) registered as such by the Public Benefit Organizations Registration Commission.

but does not include—

No. 14 of 2007.

(a) a trade union within the meaning of the Labour Relations Act, 2007;

(b) a political party within the meaning of the Political Parties Act, 2007; or

No. 10 of 2007.

(c) a religious organization which is primarily devoted to religious worship.

“register” means the register kept by the Commission pursuant to section 12;

"Tribunal" means a Public Benefit Organizations Dispute Tribunal established under section 41.

PART II—PRINCIPLES AND OBJECTIVES

Objects and purposes of the Act.

3. (1) The objects and purposes of this Act are to—

(a) encourage and support public benefit organisations in their contribution to meeting the diverse needs of the people of Kenya by—

(i) creating an environment in which public benefit organisations can operate without undue interference or obstruction;

(ii) establishing an administrative and regulatory framework within which public benefit organisations can conduct their affairs;

(iii) encouraging public benefit organisations to maintain high

standards of
governance,
transparency and
accountability and
to improve those
standards;

(iv) creating an
environment within
which the public
may have access to
information
concerning
registered public
benefit
organisations; and

(v) promoting a spirit
of co-operation and
shared
responsibility
within government
and among donors
and other interested
persons in their
dealings with public
benefit
organisations;

(b) give meaningful protection
to the internationally
recognized freedoms of
expression, association,
and peaceful assembly;

(c) promote the development
of self-regulation among

public benefit organizations.

- (d) promote compliance by public benefit organisations with their legal obligations to exercise effective control and management over the administration of their activities and funding;
- (e) facilitate a constructive and principled collaboration between public benefit organisations, the Government, business, donors and other actors in order to advance public interest;
- (f) provide an operational definition of Public Benefit Organizations (PBOs);
- (g) provide registration procedures, which are transparent, and which will facilitate establishment of PBOs while safeguarding the freedom of association;
- (h) facilitate mechanisms for government support to PBOs, such as funding of PBOs activities and contracting PBOs to implement projects on the

government's behalf;

- (i) facilitate the establishment and growth of public benefit organisations in order to generally strengthen civil society, promote social welfare and improve the conditions and quality of life for the people of Kenya.

(2) Any person interpreting or applying this Act shall give a liberal construction to its provisions, in a manner that is consistent with and promotes the objects and purposes of this Act as set out in subsection (1).

Government's responsibility to public benefit organisations.

4. (1) Consistent with its recognition of the freedoms of association, assembly, and expression, it is the duty of the Government to provide an enabling environment for public benefit organisations to be established and to operate.

(2) Every organ of Government shall determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of public benefit organisations to perform their functions.

(3) The Government and all public benefit organisations shall comply with the principles for effective collaboration set out in the First Schedule.

PART III—REGISTRATION OF PUBLIC BENEFIT ORGANISATIONS

Registration.

5. (1) In order to be eligible for the benefits that accrue from registration under this Act, a public benefit organisation is required to be registered under this Act.

(2) Subject to this Act, the fact that an organisation is registered under the provisions of any other law shall not for that reason alone operate to bar the organisation from registration under this Act, and any failure by an organisation registered under another law to register under this Act does not affect the organization's status and obligations under that other law.

(3) Registration may not be withheld or withdrawn unreasonably..

Benefits of registration.

6. (1) A public benefit organisation that is registered under this Act shall be eligible for the benefits and exemptions provided for in this Act.

(2) The benefits and exemptions referred to in subsection (1) shall include—

- (a) Provision of government funding support and contracts to perform certain work as the Minister may prescribe;
- (b) Exemptions from any tax as the Minister of Finance may prescribe;
- (c) preferential treatment in procurement for goods or services as the Minister

- may prescribe;
- (d) eligibility to participate in free and open competition for grants and other monies from public funds for the advancement of their public benefit purposes; or
- (e) such other benefits and exemptions, including those set out in the Fifth Schedule, as the Minister may on the recommendation of the Commission, prescribe.

(3) The Minister shall put in place the necessary administrative mechanisms to give effect to the provisions of sub section (2).

(4) For the avoidance of doubt, registration or non-registration under this Act does not affect the right of any person otherwise recognized under any law to peaceful assembly, association or expression.

Requirements
for registration.

7. (1) An application for registration under this Act shall be made to the Commission.

(2) An application for registration shall be accompanied by—

- (a) a copy of the constitution or other constitutive document of the public benefit organisation;

- (b) names and addresses of the founders of the organisation;
- (c) the public benefit purposes for which the PBO is organized and operated and all of the principal activities that the PBO will engage in;
- (d) the postal and physical address of the principal place of doing business of the public benefit organisation;
- (e) the prescribed fee;
- (f) such other particulars or information as may be required by the Commission in order to assist the Commission to determine whether or not the organisation meets the requirements for registration under this Act.

(3) An international NGO may register as a PBO by filing the following documentation:

- (a) an application form;
- (b) proof that it is a legal entity in another country;
- (c) the organization's address in Kenya; and
- (d) a written statement from a representative of the organization's headquarters with authority to provide such statement stating:
 - the purposes of the INGO;
 - a general description of the activities that the

- INGO is planning to carry out in Kenya; and
- the name, address and other contact information of the Authorized Agent.

(4) The constitution of a public benefit organisation that intends to register shall—

- (a) state—
 - (i) the organisation's name;
 - (ii) the objectives of the organisation;
- (b) state that participation in and membership of the public benefit organisation shall be voluntary;
- (c) state that the organisation's income and property are not distributable to any person, except as reimbursement of reasonable expenses or payment of reasonable compensation for services rendered;
- (d) make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or governing body;
- (e) ensure that the members or governing body have no rights in the property or other assets of the

- organisation solely by virtue of their being members or the governing body;
- (f) specify the organisational structures and mechanisms for its governance;
 - (g) provide for a governing body consisting of not less than five persons, three (3) of whom are not related to each other. In the case of INGOs, specify the authorized agent, being a Kenyan citizen, retained by the organisation, upon whom official notices, summonses and other process may be served;
 - (h) set out the rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings;
 - (i) determine the manner in which decisions are to be made;
 - (j) provide that the organisation's financial transactions shall be conducted by means of a banking account;
 - (k) determine the financial year of the organisation;
 - (l) set out a procedure for changing the constitution;
 - (m) set out a procedure by which the organisation may

be wound up or dissolved;
and

- (n) provide that, when the organisation is being wound up or dissolved, any asset remaining after all its liabilities have been met, shall be transferred to another public benefit organisation having similar objectives, which shall be identified through a resolution of the governing body of the organization being wound up or dissolved; otherwise, the PBO Registration Commission will make this decision.

(4) The constitution of a membership organisation that intends to register as a public benefit organisation may make provision for matters relevant to conducting its affairs, including the following—

- (a) qualifications for and admission to membership of the organisation;
- (b) circumstances in which a member will no longer be entitled to the benefits of membership;
- (c) termination of membership;
- (d) appeals against loss of the benefits of membership or against termination of

- membership and specify the procedure for those appeals and determine the body to which those appeals may be made;
- (e) membership fees and other payments by members;
 - (f) provision that except for proven gross negligence or criminal malfeasance, members or the governing body do not become liable for any of the obligations and liabilities of the organisation solely by virtue of their status as members or the governing body of the organisation;
 - (g) appointment of the governing body and their respective functions;
 - (h) procedure for nominating, electing or appointing the governing body and their powers and functions;
 - (i) circumstances and manner in which members of the governing body may be removed from office and provide for appeals against such removal and specify procedures for those appeals and determine a body to which those appeals can be made;
 - (j) provision that members of its governing body are not personally liable for any loss suffered by any person

as a result of an act or omission which occurs in good faith while the office-bearer is performing functions for or on behalf of the organisation;

- (k) making of investments;
- (l) provisions for avoiding conflict of interest and dealing with it where it arises;
- (m) the purposes for which the funds of the organisation may be used; and
- (n) acquiring and controlling of assets.

(5) Subject to subsections (3) and (4), the governing body of a public benefit organisation shall adopt such by laws or statutes as may be necessary to enable it to perform its functions and exercise its powers.

(6) The governing body of a PBO shall not delegate:

- (a) its duties to review and approve the assets, liabilities, income, expenditures, and programs of the PBO for the past year and the anticipated assets, liabilities, income, expenditures and programs for the upcoming year;
- (b) the selection of its members;
- (c) the process by which its constitution or other founding instrument can be amended or;
- (d) decisions to deregister, dissolve, or windup the PBO.

(7) A public benefit organisation shall notify the Commission of any change in the particulars submitted under subsection (3) and (4) within sixty (60) days of occurrence.

Consideration
of application.

8. (1) The Commission shall, within sixty (60) days after receiving an application under this Act—

- (a) consider the application and any further information provided by the applicant; and
- (b) if satisfied that the application meets the requirements of this Act, register the organisation as a public benefit organisation.

(2) If, after considering an application, the Commission is not satisfied that the application complies with the requirements for registration, the Commission shall forthwith, in writing, notify the applicant accordingly, 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.

(3) The period within which compliance shall be effected under subsection (2) may be extended by the Commission upon good cause being shown by the applicant, but such extension shall only be granted once and shall be for a maximum period of twenty-one days.

(4) If an applicant who has received a

notice in terms of subsection (2) complies with the requirements for registration within the prescribed period, the Commission shall within fourteen (14) days of receipt of the requested requirements, register the public benefit organisation concerned accordingly.

(5) If an applicant who has received a notice in terms of subsection (2) fails to comply with the requirements set out in that notice, the Commission shall—

- (a) refuse to register the public benefit organisation concerned; and
- (b) notify the applicant in writing of the refusal and the reasons for the refusal within the number of days remaining in the original sixty (60) day period for issuing a decision.

Certificate of registration.

9. (1) Upon registering a public benefit organisation, the Commission shall issue a certificate of registration in the prescribed form.

(2) A certificate of registration shall be a conclusive evidence of the authority to operate throughout Kenya as specified in the constitution of the public benefit organisation or in the certificate of registration.

(3) A registered public benefit organisation shall by virtue of such registration be a body corporate with perpetual succession capable in its name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) entering into contracts; and
- (d) doing or performing all such other things or acts necessary for proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

(4) A public benefit organisation which has been registered retains its registration until—

- (a) its registration is cancelled in terms of this Act;
- (b) the organisation is voluntarily deregistered; or
- (c) the organisation is wound up or dissolved.

Presumption of registration.

10. (1) If, upon the expiry of (60) days from the date a public benefit organisation made an application for registration under section 8(1), no decision has been made by the Commission, the public benefit organisation shall be deemed to have been automatically registered under this Act

and may apply to the Tribunal for an order requiring the Commission to issue to it a certificate of registration.

(2) The provisional registration of a public benefit organisation under subsection (1) shall cease upon a decision of the Commission not to register the organisation or to deny the organisation a certificate of registration.

Effect of registration and Legal Status.

11. (1) The certificate of registration issued by the Commission shall be conclusive evidence that the organisation—

- (a) has met all the requirements for registration;
- (b) has been duly registered in accordance with this Act unless it is proved that the registration thereof has been cancelled;
- (c) is a body corporate.

Service of official notices, letters, summons or legal process

(2) Any official notices, letters, summons, or other legal process shall be considered validly served on a registered PBO if it is delivered in person or by mail to the authorized agent or to the address specified pursuant to sub-paragraph (d) paragraph 2 of Section 7 and sub-paragraph (d) paragraph 3 of Section 7 of this law.

Register of public benefit organisations.

12. (1) The Commission shall cause to be kept a register in the prescribed form of—

- (a) all registered public benefit organisations;
- (b) all public benefit organisations whose registrations have been suspended or cancelled; and
- (c) all public benefit organisations that have voluntarily deregistered or that have been wound up or dissolved.

(2) The Register shall be open to public inspection during ordinary business hours.

- (a) Any person may request, in person or by mail, a copy of any entry in the register.
- (b) No more than a reasonable charge may be made for such copies.

The requested copies, or a written decision explaining the reasons for the denial of the request, shall be furnished within thirty (30) days of request.

(3) The Register will also be made available through the Internet.

(4) Within fourteen days after the end of each quarter of the financial year, the Commission shall publish in the Gazette and on a website which it shall maintain for the purpose of publication of information relating to its operations, the names of—

- (a) all public benefit organisations that are registered;
- (b) all public benefit organisations whose registrations were cancelled during the preceding quarter of the financial year; and
- (c) all public benefit organisations which deregistered voluntarily, were wound up or dissolved during the previous quarter of the financial year.

(5) Any organization that has been deregistered shall be removed from the register, but the file, including the decision on deregistration shall be retained and made available to the public.

(6) The register shall be received in proceedings before any court or tribunal as evidence of the matters recorded therein which are required by or under this Act to be so recorded.

(7) A document purporting to be certified by the Director—

- (a) to be a true copy of an entry in the register; or
- (b) stating that a public benefit organisation is not, or was

not on a date specified in the document, registered,

shall be received in proceedings before a court or tribunal as *prima facie* evidence of any such matters contained in the entry or of that fact, as the case may be.

Refusal of registration.

13. (1) The Commission may refuse to register any organization as a public benefit organisation where, in its opinion—

- (a) the application for registration does not comply with the requirements of this Act;
- (b) the objectives of the proposed public benefit organisation contravenes any written law;
- (c) the applicant organization has committed a serious violation or repeated violation of this law, other laws or regulations.
- (d) the application has given false or misleading information in any material particular;
- (e) the name of the proposed public benefit organisation is similar to the name of another institution, other

organization or entity as to be likely to mislead the public as to its true identity.

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(2) Where the Commission has refused registration of a proposed public benefit organisation, it shall, within fourteendays of the decision, notify the applicant of the reasons for the refusal.

Review by the Commission or appeal to the

14. (1) An applicant who is aggrieved by a decision of the Commission may within thirty (30) days of receiving a written notice of

Tribunal. the decision apply to the Commission for review of its decision.

(2) An applicant who is aggrieved by a decision of the Commission following review may appeal to the Tribunal against the decision.

(3) Without prejudice to subsection (1), an applicant who is aggrieved by a decision of the Commission may within thirty (30) days of receiving a written notice of the decision appeal to the Tribunal against the decision of the Commission.

(4) Upon receipt of an appeal, the Tribunal shall, within sixty (60) days from the date of receiving the appeal, consider and determine the appeal.

Procedure for suspension or cancellation.

15. (1) Where a public benefit organisation registered under this Act is in violation of the provisions of this Act, the Commission may serve on the organisation a default notice in writing specifying the nature of the default.

(2) Upon receipt of the default notice, the public benefit organisation may make representations in writing to the Commission regarding remedy or rectification of the default or violation of the Act.

(3) Where the public benefit organisation has failed to remedy or rectify the default or ensure compliance with the provisions of this Act

within the time specified in the default notice or has not made representations satisfactory to the Commission, the Commission shall fine, suspend or cancel the certificate of registration of the organisation but in no event shall the time limit for compliance be less than 15 days after receipt of the default notice.

(4) A public benefit organisation that has been fined or whose certificate has been suspended or cancelled may within sixty (60) days of receiving notice of the decision apply to the Commission for review of the decision to fine it, suspend or cancel the certificate if it is dissatisfied by the reasons for such fine, suspension or cancellation.

(5) Notwithstanding subsection (4), a public benefit organisation which is dissatisfied by the decision of the Commission to fine it, suspend or cancel a certificate may appeal to the Tribunal.

Suspension or
cancellation of
certificate.

16. (1) Subject to section 15, the Commission may cancel a certificate of registration issued under section 9 if there is substantial and credible evidence that—

- (a) the PBO has committed repeated violations of this Act;

(b) the public benefit organisation is carrying out its activities in a manner which is materially contrary to its constitution.

(2) The Commission may, subject to section 15, suspend or cancel a certificate of registration issued under section 9 if there is substantial and credible evidence that the public benefit organisation has ceased to exist;

(3) Where the certificate of registration has been suspended or cancelled the Commission shall—

(a) in writing, notify the relevant public benefit organisation within twenty-one days from the date of suspension or cancellation;

(b) order such public benefit organisation to stop its operations; or

(c) remove the name of such public benefit organisation from the register.

(4) Cancellation of the certificate of registration terminates all the PBO benefits but does not terminate any obligations, including those with respect to monies or assets obtained while the organization was a registered PBO, nor does it terminate reporting requirements covering any such monies or assets or any period of time during which it was a registered PBO.

**PART IV—SELF-REGULATION,
ADMINISTRATIVE AND REPORTING
OBLIGATIONS**

Self regulation

17. (1) Subject to this Act, public benefit organisations may establish independent self-regulation bodies or other self-regulation mechanisms in furtherance of the objects of this Act.

(2) The Commission shall support and encourage the formation of thematic and regional PBO umbrella organizations to adopt and enforce principles of voluntary self-regulation and shall collaborate with any self-regulation bodies established in terms of subsection (1).

Principles of organizational integrity and internal self-regulation.

18. (1) The governing body of a public benefit organisation shall be distinct and separate from the administrative and day to day management body of the organisation.

(2) The principles of transparency and accountability shall be applied to all the affairs and activities of a public benefit organization, whether with the Government, the target population or beneficiaries, donors, other public benefit organisations or other stakeholders.

(3) The governing body of a public benefit organisation shall establish clear and unambiguous guidelines relating to conduct and operations of the organisation, including guidelines to ensure that the personal interests of the its members, the staff and volunteers do not conflict with those of the organisation or influence, or affect the performance of their duties.

(4) A public benefit organisation shall not

discriminate against any person but in no event shall a public benefit organization created to assist targeted populations, where the target is determined in line with social justice values, be required to assist people of other populations.

(5) The activities of a public benefit organisation shall, upon request, be open and accessible to scrutiny by its respective stakeholders, except for personal matters, legal matters and proprietary information, as may be provided for by or under any law.

Voluntary
service on
governing body

19. Every person who serves on the governing body of a public benefit organisation shall serve on a voluntary basis and shall only be eligible for the reimbursement of costs and expenses incurred in the service of the organisation.

Ethical
principles and
aspirations

20. (1) In the pursuit of its aims, objectives and activities, every public benefit organisation shall be guided by the following principles and aspirations-

- (a) commitment to the sanctity of human life and to a peaceful and nonviolent orientation in all its activities;
- (b) promotion of democracy, human rights, the rule of law, good governance as well as justice for all the people of Kenya;
- (c) respect for the equality, rights and dignity of all

people;

- (d) promotion of social justice to ensure balanced economic development;
- (e) rejection of partisan, political, ethnic, cultural racial or religious intolerance and all other forms of discrimination;
- (f) commitment to the promotion of gender equality and social inclusion at all levels;
- (g) maintenance of a culture of transparency and accountability particularly in the receipt and management of funds and avoiding corrupt and unethical practices;
- (h) maintenance of high standards of governance and management of the public benefit organisation by prescribing and implementing policies, norms of conduct and operational requirements that apply to its staff, management and governing body;
- (i) promotion of a culture of

dialogue and sharing of resources, information, expertise and experiences;

(j) maintenance of a high standard of professionalism in service and interactions and dealing with people through honesty, fairness, integrity, respect for confidentiality, objectivity, care, diligence, prudence, timeliness and straightforwardness ;

(k) rejection of research efforts, programmes, projects and other activities which are directly or indirectly aimed at developing methods of torture, or other forms of techniques that violate and subvert people's and human rights;

(l) observance of clear guidelines on conflict of interest;

(m) fostering and maintaining mutual trust, partnership and respect between public benefit organizations, the private sector, donors and the Government;

(n) identifying and reporting any breach or violation of

the provisions of this Act to the Commission;

- (o) respect for the autonomy, independence and diversity of public benefit organisations.

Promotion of Self Regulation

(2) The Commission, shall encourage umbrella organizations for public benefit organisations to develop and publish Codes of Conduct. The Codes shall apply to any member, governing body official, staff or volunteer of the Public Benefit Organizations.

(3) The Commission will facilitate training on PBO self-regulation to deepen the knowledge and strengthen the capacity of PBOs for self-regulation.

Fiscal transparency.

21. Every public benefit organisation registered under this Act shall—

- (a) implement internal accounting and administrative procedures necessary to ensure the transparent and proper use of its financial and other resources;
- (b) utilise its financial and other resources for the attainment of its aims, objects and purposes.

Accounts and reports.

22. (1) Every public benefit organisation registered under this Act shall keep proper books of accounts and other records in

relation to its operations and activities and shall, subject to subsection (2), prepare annually a statement of accounts in a form which conforms to the standards of the generally accepted accounting practice applicable to non-profit organizations.

(2) The Financial Statements prepared and submitted by a PBO with annual income or expenditure in excess of one hundred thousand (100,000) US\$ shall include an opinion signed by an independent auditor as to whether the financial statements present fairly, in all material respects, the organization's financial position for the reporting period.

Annual report.

23. Within six months after the end of each financial year, every public benefit organisation registered under this Act shall cause to be made and submitted to the Commission—

- (a) a statement of its accounts audited in accordance with section 22(2) above;
- (b) a certified copy of its financial statements;
- (c) a report dealing generally with the programme of activities of the public benefit organisation during that financial year.

Duty to provide information.

24. Every registered public benefit organisation shall provide to the Commission, in writing, the names and physical, business and residential addresses of members of its governing

body within one month after any appointment or election of the governing body.

**PART V –ESTABLISHMENT, POWERS
AND FUNCTIONS OF THE COMMISSION**

Establishment
of the
Commission.

25. (1) There is established a commission to be known as the Public Benefit Organisations Registration Commission.

(2) The Commission is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Commission will have

designated offices or officers in all 47 counties to facilitate registration of PBOs and deal with matters relating to PBOs.

Membership of
the
Commission.

26. (1) The Commission shall consist of —

(a) six members, not being public officers, appointed by the Minister with the approval of the National Assembly in accordance with the procedure set out in the Second Schedule;

(b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to planning and national development or a representative appointed by such Permanent Secretary in writing;

(c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to civil society organisations or a representative appointed by such Permanent Secretary in writing;

(d) the Permanent Secretary in the Ministry for the time being responsible for matters relating to finance or a representative appointed by such Permanent Secretary in writing;

(e) the Director.

(2) At least three of the members of the Commission appointed under subsection (1) (a) shall be representatives from public benefit

organizations, nominated by PBOs, with due consideration to regional representation.

(3) At least three of the members of the Commission appointed under subsection (1) (a) shall be male and three shall be female.

(4) The members of the Commission shall, at their first meeting, elect a chairperson and vice-chairperson from amongst the members of the Commission appointed under subsection (1).

Qualifications of members of the Commission.

27. (1) A person shall be qualified for appointment as a member of the Commission if such person—

- (a) is a citizen of Kenya;
- (b) is a person of high moral character and proven integrity; and
- (c) has knowledge and experience in matters relating to public benefit organisations, human rights, governance, public administration, law or socio-economic development.

(2) No person shall be qualified for appointment as a member of the Commission if such person—

- (a) is a member of the National Assembly;
- (b) is a member of a local

authority;

- (c) is a member of the executive body of, or is actively involved in the affairs of, a political party.

Term of office.

28. The chairperson and the members of the Commission shall hold office for a term of three years and may be re-appointed for one (1) or two (2) year terms instead of the usual three (3) year term, in order to assure that the numbers of members in each cohort are more-or-less equal.

Oath of office.

29. The chairperson, the members of the Commission and the Director shall each make and subscribe to an oath or affirmation of office before the Chief Justice.

Vacancy.

30. (1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by writing under his hand addressed to the Minister;
- (c) is removed from office in accordance with the provisions of section 31;
- (d) is convicted of an offence and sentenced to imprisonment for a term of three months or more without the option of a fine;

- (e) is unable to discharge the functions of his office by reason of physical or mental infirmity;
- (f) is absent from three consecutive meetings of the Commission without good cause; or
- (g) is declared bankrupt.

(2) The Minister shall notify every vacancy in the Gazette within seven days of the occurrence of the vacancy.

Removal from office.

31. (1) A member of the Commission may be removed from office by the Minister—

- (a) for gross misconduct or misbehaviour; or
- (b) if convicted of an offence involving moral turpitude,

but shall not be so removed except on a resolution of the Commission supported by at least two-thirds of the members of the Commission

(2) For the purposes of subsection (1), “misbehaviour” includes, but is not limited to criminal conduct and breach of the standards of professionalism published under section 20(1)(j).

Filling of

32. (1) Where a vacancy occurs in the

vacancy. Commission as a result of death, disability, resignation or removal of a member of the Commission, the Minister shall appoint a replacement from among the short listed persons considered by the National Assembly in accordance with the Second Schedule.

(2) A person who is appointed in place of a member of the Commission whose office has become vacant under this section shall hold office for the remainder of the term of office of that member of the Commission.

Functions of the Commission.

33. (1) The functions of the Commission shall be to—

- (a) register and de-register public benefit organisations in accordance with this Act;
- (b) maintain a register of public benefit organisations registered under this Act with the precise sectors, affiliations and locations of their activities;
- (c) interpret the national policy on public benefit organisations so as to assist in its smooth implementation and observance by Government Ministries, departments and agencies at various levels;

- (d) receive and review annual reports of public benefit organizations;
- (e) advise the Government on the activities of public benefit organisations and their role in development within Kenya;
- (f) issue forms, instructions, and model documents;
- (g) facilitate information sharing and networking between public benefit organisations and the Government;
- (h) institute inquiries to determine if the activities of public benefit organisations do not comply with this Act or any other law;
- (i) provide advice and training to PBOs; and
- (j) do anything incidental or conducive to the performance of any of the preceding functions.

(2) In the performance of its functions in terms of subsection (1), the Commission shall be independent and shall not act under the

direction or control of any person or authority.

Powers of the
Commission.

34. The Commission shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Commission shall have power to—

- (a) control, supervise and administer the assets of the Commission in such manner as best promotes the purpose for which the Commission is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Commission;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) open such banking accounts for its funds as may be necessary;
- (e) invest any funds of the Commission not immediately required for its purposes in the manner provided in section 48;
- (f) undertake any activity

necessary for the fulfillment of any of its functions.

Conduct of business and affairs of the Commission.

35. (1) The conduct and regulation of the business and affairs of the Commission shall be as provided in the Third Schedule.

(2) Except as provided in the Third Schedule, the Commission may regulate its own procedure.

Director.

36. (1) There shall be a director of the Commission who shall be appointed by the Commission and whose terms and conditions of service shall be determined by the Commission in the instrument of appointment or otherwise in writing from time to time.

(2) A person is not eligible for appointment as the Director unless he or she is a person of integrity and has knowledge or at least ten years' demonstrable experience in matters relating to strategic and program planning, operations or management, including staff management or supervision, or any equivalent combination of education and experience from which comparable knowledge, skills and abilities have been achieved.

(3) The Director shall—

- (a) be the chief executive officer and the secretary to the Commission; and
- (b) subject to the directions of the Commission, be responsible for the day to day management of the

affairs and staff of the Commission.

(4) The Director shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote on any matter falling to be decided by the Commission at any such meeting.

(5) The Director may be removed from office by the Commission before expiry of the term set out in the instrument of appointment only for inability to exercise the functions of the office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour.

(6) For the purposes of subsection (5), “misbehaviour” includes, but is not limited to criminal conduct and breach of the standards of professionalism published under section 20(1)(j).

(7) The Director shall be removed from office by the Commission if the question of the Director’s removal has been referred to a special committee of the Commission appointed for the purpose of considering the matter and—

- (a) the committee has so recommended; and
- (b) the Commission has approved the committee’s recommendation by the votes of not less than two-thirds of all its members.

Staff of the Commission.

37. (1) The Commission shall appoint a Deputy Director and such officers and other staff as are necessary for the proper discharge of its

functions under this Act, upon such terms and conditions of service as it may determine.

(2) In appointing officers and staff under subsection (1), the Commission shall have regard to gender equity and regional balance.

Delegation by the Commission.

38. The Commission may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Commission, the exercise of any of the powers or the performance of any of the functions or duties of the Commission under this Act or under any other written law.

Protection from personal liability.

39. (1) No act or omission by any member of the Commission or by any officer, employee, agent or servant of the Commission shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Commission of the liability to pay compensation to any person for any injury to the person, the person's property or to any of the person's interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

Common seal.

40. (1) The common seal of the Commission shall be kept in such custody as the Commission may direct and shall not be used except on the order of the Commission.

(2) The affixing of the common seal of the Commission shall be authenticated by the

signature of the chairperson and the Director and any document not required by law to be made under seal and all decisions of the Commission may be authenticated by the signatures of both the chairperson and the Director.

(3) Notwithstanding the provisions of subsection (2) the Commission shall, in the absence of either the chairperson or the Director in a particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the Director.

(4) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Commission under this section shall be presumed to have been duly given.

PART VI—THE PUBLIC BENEFIT ORGANISATIONS DISPUTES TRIBUNAL

Establishment
of the Tribunal.

41. (1) There is hereby established a tribunal to be known as the Public Benefit Organisations Disputes Tribunal which shall consist of members appointed by the Attorney-General and approved by the National Assembly, as follows—

- (a) a chairperson who shall be an advocate of the High Court of not less than seven years standing;
- (b) two advocates of the High Court of not less than five

years standing;

- (c) two persons having such specialized skill or knowledge necessary for the discharge of the functions of the Tribunal .

(2) At least two of the persons appointed under subsection (1) shall be male and at least two shall be female.

(3) No member of the Commission may serve as a member of the Tribunal.

(4) The quorum for a meeting of the Tribunal shall be the chairperson and two other members.

(5) All matters before the Tribunal shall be decided by the votes of a majority of the members present.

(6) There shall be paid to the members of the Tribunal such remuneration and allowances as the Commission may in consultation with the Treasury determine.

(6) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of three years from the date of his appointment;
- (b) if the member ceases by any reason to be an advocate as referred to in

subsection (1);

(c) if the member is removed from membership of the Tribunal by the Attorney-General for failure to discharge the functions of office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; and

(d) if the member resigns.

Jurisdiction of the Tribunal.

42. (1) The Tribunal shall have jurisdiction to—

(a) hear and determine complaints arising out of any breach of the provisions of this Act;

(b) hear and determine any matter or appeal made to it pursuant to the provisions of this Act; and

(c) perform such other functions as may be conferred upon it by this Act or by any other written law being in force.

(2) The jurisdiction conferred upon the Tribunal under subsection (1) excludes criminal jurisdiction except as provided under Section 44.

Powers of the

43. (1) On the hearing of a complaint

Tribunal

or an appeal, the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

(2) Where the Tribunal considers it desirable for the purpose of minimizing expense or avoiding delay or for any other special reason, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.

(3) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of the matter before it, notwithstanding that the evidence would not otherwise be admissible under the Evidence Act.

Cap. 80.

(4) The Tribunal shall have power to summon expert evidence as may be necessary for the discharge of its functions under this Act.

(5) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(6) All summonses, notices or other documents issued under the hand of the chairperson of the Tribunal shall be deemed to be issued by the Tribunal.

(7) Upon any complaint or appeal being made to the Tribunal under this Act, the Tribunal

may—

- (a) confirm, set aside, vary or quash the order or decision in question;
- (b) require the Commission to revise or review its decision;
- (c) require the Commission to inquire into specific details from the appellant and make further consideration of the application; or
- (d) make such other order as may be appropriate in the circumstances;

(8) Without prejudice to the generality of paragraph (b), make an order for the maintenance of the status quo of any matter or activity which is the subject of the complaint or appeal until the complaint or appeal is determined.

(9) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may, in its discretion, admit to be heard on behalf of the party.

(10) A decision made by the Tribunal shall, be final and binding on the parties unless judicial review thereof commences within fourteen days from the date of the Tribunal's decision.

(11) 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.

(12) A party to the review which disobeys the decision of the Tribunal or the High Court shall be in breach of this Act and any action by such party contrary to the decision of the Tribunal or the High Court shall be null and void.

Disobedience of summons to give evidence, etc.

44. Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements, or other documents or required to answer interrogatories and who, without sufficient cause—

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him;
- (b) refuses or fails to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions lawfully put to him by or with the concurrence of the Tribunal; or
- (c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control mentioned or referred to in any summons served on him, commits an

offence and shall be liable upon conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years, or to both.

Enforcement of orders for damages and costs.

45. (1) Where the Tribunal awards damages or costs in any matter before it, it shall, on application by the person in whose favour the damages or costs are awarded, issue to him a certificate stating the amount of the damages or costs.

(2) Every certificate issued under subsection (1) may be filed in the High Court by the person in whose favour the damages or costs have been awarded and, upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

Rules.

46. Except as otherwise provided in this Act, the Chief Justice may in consultation with the chairperson of the Tribunal, and by Notice in the Gazette make rules governing the practice and procedure of the Tribunal having regard to the objects of this Act.

PART VII – FINANCIAL PROVISIONS

Funds of the Commission.

47. The funds of the Commission shall comprise of –

- (a) such moneys as may be provided by Parliament for the purposes of the Commission;

(b) such fees, monies or assets as may accrue to or vest in the Commission in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and

(c) all monies from any other source provided for or donated or lent to the Commission.

Financial year. **48.** The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates. **49.** (1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial year and in particular, the estimates shall provide for –

(a) the payment of the salaries, allowances and other charges in respect of members and staff of the Commission;

(b) the payment of pensions, gratuities and other charges

in respect of members and staff of the Commission;

- (c) the proper maintenance of the buildings and grounds of the Commission;
- (d) the maintenance, repair and replacement of the equipment and other property of the Commission; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Commission may deem appropriate.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister's approval, the Commission shall not increase the annual estimates without the consent of the Minister.

Accounts and audit.

50. (1) The Commission shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Controller and Auditor-General the accounts of the Commission together with—

(a) a statement of the income and expenditure of the Commission during that year; and

(b) a balance sheet of the Commission on the last day of that year.

(3) The accounts of the Commission shall be audited and reported upon in accordance with the Public Audit Act, 2003.

No. 12 of 2003.

Investment of funds.

51. The Commission may invest any of its funds in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART VIII – MISCELLANEOUS PROVISIONS

Voluntary deregistration, dissolution or winding up.

52. (1) A registered public benefit organisation may deregister, wind itself up or dissolve voluntarily by sending to the Commission—

(a) in the case of a membership organisation, a resolution by a vote of at least two-thirds of the members of the

organisation, signed by the chairperson of the governing body of the organisation, or in the case of a non-membership organisation, a voluntary decision made by its governing body in accordance with the PBO's constitution

—

- (i) stating its intention to deregister, wind up or dissolve voluntarily and the reasons therefor; and
 - (ii) specifying a date, not exceeding two months from the date of the resolution, on which the deregistration is to take effect; and
- (b) a copy of the reports referred to in section 23 for the period from its previous financial year up to the date of the resolution contemplated in this subsection.

(2) If a registered public benefit organisation is being wound up or dissolved in terms of any other law, the organisation shall, within one month after completion of the winding up or dissolution process or the relevant order of court, send to the Commission—

- (a) a written notice—
 - (i) stating this fact;
 - (ii) containing certified copies of all relevant documents confirming the winding up or dissolution; and
- (b) a copy of the reports referred to in section 23 for the period from its previous financial year up to the date of the written notice contemplated in this subsection.

(3) Upon receiving a resolution or notice of voluntary deregistration or winding up or dissolution from a registered public benefit organisation, the Commission shall on the date specified in the resolution or notice—

- (a) cancel the organisation's certificate of registration, and deregister it by amending the register; and
- (b) notify the organisation in

writing of the deregistration and confirm the date on which the amendment was made to the register.

(4) When an organisation is deregistered, wound up or dissolved, any asset remaining after all its liabilities have been met, shall be transferred to another public benefit organisation having similar objectives, which shall be identified through a resolution of the governing body of the organization being deregistered, wound up or dissolved; otherwise, the PBO Registration Commission will make this decision.

Offences and penalty.

53. Any person who—

- (a) forges or, utters any document for the purposes of procuring registration;
- (b) makes false statements in respect of an application for registration;
- (c) makes any material false statement in any document submitted to the Commission;
- (d) fraudulently holds out any organisation as being registered under this Act;
- (e) fraudulently makes use of a registration number, registration certificate or

any information contained
in a registration certificate,

commits an offence and shall be liable, on conviction, to a fine not exceeding three hundred thousand shillings, or imprisonment for a term not exceeding two years, or both.

Income and
Economic
Activity

54. (1) A PBO may engage in lawful economic activities as long as the income is used solely to support the public benefit purposes for which the organization was established.

(2) The income of a PBO may include donations of cash, securities, and in-kind contributions; bequests; membership fees; gifts; grants; real or personal property; and income generated from any lawful activities undertaken by the PBO with its property and resources.

(3) A PBO may own and manage property and assets for the accomplishment of its not-for-profit purposes.

Public Policy
and Political
Activities

55. (1) A PBO may engage freely in research, education, publication and advocacy with respect to any issue affecting the public interest, including criticism of the policies or activities of the state or any officer or organ thereof.

(2) A PBO may also express its views on any issue or policy that is or may be debated or discussed in the course of a political campaign or election.

(3) A PBO may not engage in fundraising or campaigning to support or oppose any political party or candidate for appointive or elective

public office, nor may it propose or register candidates for elective public office.

(4) The government will engage with PBOs on all matters of development and will invite them to participate in policy making.

(5) The government will involve PBOs in policy decision making on issues affecting them, particularly at the local levels, and every Ministry will designate officers who will deal with matters relating to PBOs, and work closely with each other and with the Commission.

56. (1) Any registered public benefit organization wishing to obtain entry permits in respect of prospective employees shall, where –

Entry Permits

- (a) the services of such employees are necessary for the proper function of the organization; or
- (b) no persons with comparable skills are available locally; or
- (c) such employees will contribute towards the training of Kenyans to obtain scientific, technical and managerial skills;

apply in writing to the Principal Immigration Officer for the issuance of the required permits.

(2) Any registered PBO that has applied for an entry permit for a prospective employee and that is aggrieved by a decision refusing to grant it an entry permit may within thirty (30) days of receiving a written notice of the decision, appeal against that decision to the Minister for Immigration and Registration of Persons .

Regulations.

57. (1) The Minister may, on the recommendations of the Commission,

make regulations generally for the better carrying into effect of the provisions of this Act.

(2) Any condition, restriction or prohibition contained in Regulations made under subsection (1) shall be proportionate to the objects of those Regulations and shall limit the rights of persons and bodies as little as is reasonably possible.

(3) If a failure to comply with a condition, restriction or prohibition contained in Regulations under this Act is an offence, the Regulations shall provide that, to the extent practicable, before being subjected to criminal liability, the affected person shall be given notice of the offence and a reasonable opportunity to comply with the Regulations.

(4) Before making Regulations under this section, the Minister shall, unless the public interest requires that the Regulations be made without delay, comply with the following—

(a) the intention to make Regulations shall be announced by notice in the Gazette and in at least two daily newspapers of national circulation specifying—

(i) that draft Regulations have been developed for comments;

(ii) the place where a

copy of the draft Regulations may be obtained;

- (b) a period of at least one month from the date of the notice shall be allowed for interested parties to comment on the draft Regulations;
- (c) comments received on the draft Regulations shall be considered before making the Regulations.

Repeal of No.
19 of 1990.

58. The Non-Governmental Organisations Co-ordination Act, 1990 is repealed.

Transition.

59. The transitional provisions set out in the Fourth Schedule shall apply upon commencement of this Act.

FIRST SCHEDULE (s. 4(3))

**PRINCIPLES FOR EFFECTIVE
COLLABORATION**

BETWEEN

**THE GOVERNMENT AND CIVIL SOCIETY
ORGANISATIONS**

PART I – OBJECTIVES

Objectives of principles.

1. The objectives of these principles for effective collaboration are to-

- (a) strengthen collaboration between the Government and civil society organisations;
- (b) reinforce complementary efforts of the Government and civil society organisations and their contribution in enhancing the country's development;
- (c) enhance the enabling environment for the achievement of joint development programming of both sectors;
- (d) offer guidance to the Government and civil society organisations in their relations and interactions with each other;
- (e) serve as a basis for resolving conflicts that affect Government and civil society organisation collaboration;
- (f) promote effective coordination and dissemination of information on Government and civil society organisation

- collaboration; and
- (g) provide the basis for a legal or policy framework aimed at guiding Government and civil society organisation collaboration.

PART II – PREAMBLE

Preambular **The Representatives of the Government and Civil Society Organizations:**

Desirous to further develop and strengthen the working relations between the two sectors;

Recognizing the importance of mutual coexistence and the need to work together for the posterity of the nation and peoples of Kenya;

Aware of the necessity of complementary efforts of the Government and civil society organisations for social, economic and cultural development;

Determined to strengthen collaboration, dialogue and relations between the Government and civil society organisations;

Conscious that these principles only serve as a guide for engagement between the Government and civil society organisations who choose to work together;

Committed to principled collaboration;

Hereby agree to the following principles for collaboration to guide our collaborative work.

PART III – GUIDING PRINCIPLES

Guiding principles for collaboration

1. Dialogue and Communication

Government and civil society organisation sectors will ensure that dialogue is open, respectful, informed, sustained and welcomes diverse viewpoints; and that they provide forums where they can meet each other periodically for focused discussions, consultation and consensus building.

2. Communication

The sectors will aim to ensure:

- (a) free flow of information between and to all actors involved in any collaboration initiative to promote similar comprehension with regard to it and to facilitate efficiency;
- (b) engagement in regular, open and inclusive communication and problem solving; and
- (c) establishment of clear and open communication processes in which information and ideas are shared openly and regularly.

3. Managing Diverse Expectations

The sectors will individually, and where appropriate, collectively inform their respective stakeholders and the public as well, of their roles and contributions to society and the successes achieved through their collaboration.

4. Conflict Management

The sectors will:

- (a) make provisions to set up agreeable modalities/processes to manage

- conflicts inherent in the work they jointly do;
- (b) identify and address all disagreements and conflicts immediately and devote substantial time, resources and personal effort to the management of all conflicts, on behalf of any collaborative initiative's continuation;
 - (c) address challenges to any collaboration with open dialogue and negotiation or acknowledge the need for re-negotiation; and
 - (d) verify any risks to any collaboration at the beginning and define ways of mitigating such risks.

5. Learning and Sharing

To enhance the knowledge and practice of collaboration, the sectors will ensure that they:

- (a) convey a readiness to accept constructive criticism;
- (b) accommodate new ideas from each other;
- (c) pursue a harmonized approach where this is deemed necessary for the promotion of the collaborative initiative and in the public interest;
- (d) work jointly to identify an agreed, common vision and align collaboration activities and programs with it;
- (e) demonstrate a willingness to make changes in themselves as part of the process of working with others, that is, show flexibility; and
- (f) share ideas, perspectives, information, experiences and knowledge consistently

in order to contribute to a better understanding of the different work styles, cultures and time frames and to promote best practice in collaboration.

6. Sustainability

Capacity development across the board

The sectors will aim to ensure sustainability of the collaborative initiative and its benefits through developing their capacities and those of their beneficiaries in the context of their collaborative efforts. The sectors will work jointly to identify capacity gaps and develop a plan to build their capacities for successful implementation of collaborative programs.

7. Joint Initiatives

To ensure clarity of roles, synergy and sustainability of collaborative initiatives, the sectors will jointly:

- (a) embark on harmonized planning activities at the beginning of the initiative to identify needs, define objectives and agree on each party's roles and responsibilities with regard to the collaboration.
- (b) develop modalities or structures that are agreeable to each of them, for the implementation of the collaboration
- (c) provide their implementing agencies or officials with the necessary incentives, resources, and opportunities to

- participate in the collaborative effort.
- (d) involve each other in the collaborative initiative's decision making.

8. Institutionalization

The sectors will aim to secure institutional memory and ensure continuity in their collaborative initiatives through:

- (a) designating focal points at all relevant levels, for all activities and issues concerning their collaboration;
- (b) integrating the collaboration process into ongoing programs;
- (c) embarking on succession planning at the beginning of the collaboration; and
- (d) ensuring effective representation throughout the collaboration.

9. Resources

In line with their competencies (technical, financial or other), the sectors will provide appropriate and sufficient resources to any collaborative effort, in order to maximize its chances of success, growth, maturation and continuation.

10. Good Governance

(a) Good Stewardship of Resources

The sectors will ensure proper care, use and allocation of resources during their collaborative initiatives.

(b) Transparency and Accountability

The sectors will aim to convey openness and responsibility for the activities and use of resources during their collaboration. The sectors will also consider themselves fully accountable for the success or failure of their collaborative endeavours.

(c) Integrity Enhancement

The sectors will work jointly to promote and ensure:

- (a) a culture of ethical conduct and best practices is upheld in their collaborative initiatives;
- (b) identification of, and adherence to or application of quality standards of sound management and institutional excellence, in the implementation of collaborative initiatives; and
- (c) the identification of agreeable modalities to detect and address conflicts of interest.

11. Equity and Equality in Partnerships

Within the context of their collaboration, the sectors will reinforce:

- (a) mutual respect for each sectors' rights;
- (b) identification and participation of partners in the collaborative initiative on the basis of competence; and
- (c) building of synergies based on their comparative strengths.

12. Promotion of Trust

12.1 Enabling Environment

The sectors will work together to provide an enabling environment for collaboration through:

- (a) promoting mutual respect, understanding, appreciation and acceptance of each other and of the diversity or workings of the other partner(s) and constraints they work within;
- (b) acknowledging and valuing each other's core competencies; and
- (c) setting up measures for frequent communication, constructive discussions and the dissemination of information to relevant stakeholders.

12.2 Shared Credit

The Sectors will ensure that their public relations activities:

- (a) accurately reflect their collaborative efforts;
- (b) take into consideration each organization's policies, procedures and communication needs; and
- (c) promote the spirit of collaboration.

13. Monitoring, Evaluation and Reporting

The sectors will work together to ensure that:

- (a) all of their collaborative efforts are aimed at meeting identified needs of their beneficiaries through adopting results based management;
- (b) they report publicly on their collaborative efforts using clear, consistent and transparent reporting policies; and
- (c) they develop and use procedures and tools agreeable to each of them to monitor and evaluate the development impact of their efforts.
- (d) They evaluate, on an annual basis, any progress observed in the number of collaborative initiatives entered, as well as the manner in which the initiatives are taking place and the successes achieved through them.

14. Predictability

The sectors will work together to ensure that their collaborative initiatives are predictable in practice through:

- (a) definition, in advance, of all processes required;
- (b) recognition, in advance of their relationships with third parties, which may influence GOK-civil society organisation collaboration; and
- (c) identification, in advance, of risks, needs and support required for effective implementation.

PART V - COMMITMENTS

1. Government commits itself to:

- (a) establish, respect, and promote an enabling environment for civil society organisation work; and
- (b) promote the use of these guiding principles in all GOK-civil society organisation collaborative initiatives.

2. Civil society organisations commit themselves to:

- (a) explore opportunities for principled and structured collaboration with GOK in their activities; and
- (b) promote the use of these guiding principles in all GOK-civil society organisation collaborative initiatives.

3. The sectors jointly commit themselves to:

- (a) collaborate in a manner consistent with these guiding principles;
- (b) champion the repeated use of these principles by their sectors, over the long-term.

Joint
Committee

4. The sectors agree to establish a Joint Committee of not more than 15 members, with shared representation from both sectors in pursuance of the provisions of these principles. The Joint Committee will annually monitor and assess progress made

by the sectors in terms of application of these principles and report this to interested parties and stakeholders.

5. The Committee will base its report on information collected from evaluation processes conducted by individual Government and civil society organisation actors and also on emerging issues with regard to collaboration. They will also champion the dissemination of the principles amongst the sectors, their respective stakeholders and the public as well. The Joint Committee will also clarify any questions touching on the construction, meaning or effect of these principles or their contents.

Review

6. The Joint Committee will review these principles on an annual basis and will receive proposals for review of the principles from either GOK or civil society organisation actors. Any reviews will be agreed upon by means of exchange of letters.

SECOND SCHEDULE (s. 2)

**PROCEDURE FOR NOMINATING
MEMBERS OF THE COMMISSION**

1. The Minister shall, within fourteen days of the commencement of this Act, by advertisement in the Gazette and in at least three daily newspapers of national circulation, declare vacancies and invite applications from persons qualified under this Act for nomination as members of the Commission.

2. An application under paragraph 1 shall be forwarded to the Permanent Secretary for the Ministry for the time being responsible for planning and national development within fourteen days of the advertisement and may be made by —

- (a) any qualified person; or
- (b) any person, organization or group of persons proposing the nomination of any qualified person.

3. The names of all applicants under paragraph 1 shall be published in the Gazette.

4. The Minister shall, within seven days of the expiry of the period prescribed under paragraph 1, convene a Committee comprising of representatives of a broad spectrum of civil society organisations for the purposes of considering the applications, interviewing and short listing twelve persons qualified for appointment as members of the Commission.

5. The Committee shall rank and provide comments regarding each of the finalists to the Minister.

6. The Minister shall within seven days of the expiry of the period provided for in paragraph 4 forward the shortlisted names to the National Assembly.

7. The National Assembly shall, within fourteen days of the receipt of names under paragraph 6, through an open and consultative vetting process, consider all nominations and approve the names of six nominees for appointment as members of the Commission.

8. Upon consideration and approval by the National Assembly, the Clerk of the National Assembly shall within seven days forward the names of the approved persons to the Minister for appointment.

9. Where the National Assembly fails to approve the minimum number of nominees required, the Clerk of the National Assembly shall within three days of the decision communicate the names of the approved nominees and those of the rejected nominees to the Minister for the submission by the Minister, within seven days, of fresh nominations in respect of the rejected candidates.

10. Upon submission of fresh nominations by the Minister procedure under paragraphs 7 and 8 shall apply.

11. Upon receipt of the names of the nominees, the Minister shall, by notice in the

Gazette, appoint the approved persons as members of the Commission.

10. In nominating or appointing persons as members of the Commission, the National Assembly and the Minister shall have regard to gender equity and regional balance.

THIRD SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION

Meetings.

(1) The Commission shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Commission at any time for the transaction of the business of the Commission.

(3) Unless three quarters of the total members of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.

(4) The quorum for the conduct of the business of the Commission shall be half of the total members including the chairperson or the person presiding.

(5) The chairperson, or in his absence the

vice-chairperson, shall preside at every meeting of the Commission but the members present shall elect one of their number to preside whenever the chairperson and vice-chairperson are absent, and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (5), no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Commission may determine its own procedure and the procedure for any committee of the Commission and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of
the
Commission.

2. (1) The Commission may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Commission shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) All decisions by the committees appointed under paragraph (1) shall be ratified by the Commission.

Disclosure of interest.

3. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Commission who contravenes subparagraph (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings.

Contracts and instruments.

4. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Commission by any person generally or specially authorized by the Commission for that purpose.

FOURTH SCHEDULE (s.52)

TRANSITIONAL PROVISIONS

Interpretation.

1. In this Schedule—

“appointed day” means the day on which this Act shall come into operation;

“Commission” means the Public Benefit Organisations Registration Commission established under this Act; and

“former Board” means the Board known as the Non-Governmental Organisation Co-ordination Board existing immediately before the commencement of this Act.

Assets and liabilities.

2. (1) All the funds, assets and other property, both movable and immovable, which immediately before the appointed day were vested in the former Board shall by virtue of this paragraph and without further assurance, vest in the Commission.

(2) All rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the appointed day were vested in, imposed on or enforceable by or against the former Board shall by virtue of this paragraph, be transferred to, vested in, imposed on, or be enforceable by or against the Commission.

(3) On and after the appointed day, all actions, suits or legal proceedings by or against the former Board may be continued or prosecuted by or against the Commission and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(4) Any reference in any written law or in

any document or instrument to the former Board shall, on and after the appointed day, be construed to be a reference to the Commission.

Annual estimates.

3. The annual estimates of the former Board, for the financial year in which the appointed day occurs, shall be deemed to be the annual estimates of the Commission for the remainder of that financial year:

Provided that such estimates may be varied by the Commission in such manner as the Minister may approve.

Administrative decisions.

4. The administrative decisions made by the former Board or by the Minister which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Commission or the Minister under this Act.

Non-Governmental Organisations registered by the former Board

5. (1) Every non-governmental organisation which on the appointed day is registered under the Non-Governmental Organisations Act(now repealed) shall, be deemed to be registered as a public benefit organisation under this Act and shall

have one (1) year following the appointed day to seek registration as a PBO under this Act.

(2) A non-governmental organisation referred to in paragraph (1) that fails to seek registration under this Act, after specific notice to it and a reasonable opportunity to do so, shall cease to have PBO or any similar or equivalent status thirty (30) days after the expiration of the specific notice period, unless it has by then, filed its PBO registration

application.

Members of
the
Commission.

6. (1) A person other than a public officer who was a member of the former Board immediately before the appointed day shall be deemed to be a member of the Commission for the remainder of the term of that person.

(2) Until such time as the terms of all persons serving the remainder of their term under paragraph 1 have lapsed, the Commission shall be deemed to be properly constituted notwithstanding that it has more members than as provided for in section 26 of this Act.

FIFTH SCHEDULE (s. 6(2))

**BENEFITS OF PBO REGISTRATION
AROUND THE WORLD**

There are a variety of benefits that governments around the world, in their discretion, provide to public benefit organizations. They include, *inter alia*:

- 1) Indirect government support in the form of

- a. exemptions from
 - i. income tax on income received from membership subscriptions and any donations or grants;
 - ii. 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;
 - iii. tax on interest and dividends on investments and gains earned on assets or the sale of assets;
 - iv. stamp duty, and;
 - v. court fees.
 - b. 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;
 - c. incentives for donations by legal and natural persons;
 - d. Employment Tax Preferences and;
 - e. special tax incentives for donations to form endowments, prudent investment policies, etc.
- 2) 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;

- 3) Preferential treatment in public procurement procedures and bidding for contracts;
- 4) Provision of information to enable PBOs to contribute effectively to the policy processes; and
- 5) Access to training courses that are relevant to PBOs and offered by government institutions.

DRAFT

MEMORANDUM OF OBJECTS AND REASONS

Dated the, 2010.

A.N. Other,
Member of Parliament.

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