

PBO ACT 2013 Quest for an Enabling for

establishment of an independent Disputes Tribunal;

- **Good Governance, Transparency and Accountability of PBOs:** Prescribes minimum provisions to be included in the governing documents of Public Benefit Organisations. The Act also provides for financial transparency and reporting by PBOs;
- **Leadership and Integrity:** It advances and demands good leadership and accountability from PBOs and the Regulator in line with the spirit of Chapter Six of the new constitution on Leadership and Integrity;
- **Establishment of an Independent Registration and Regulation agency:** Sections 34-36 of the PBO Act outlines a rigorous process for the selection of members of the governing body of the PBO Regulatory Authority in line with the provisions of the constitution.
- **Definition of Public Benefit Organisation;** Section 5 of the PBO Act defines a PBO as “a voluntary membership or non-membership group of individuals or organisations, which is autonomous, non partisan, non profit making engaged in public benefit activities”

Participating Organisations

4Cs Trust; ACT!; Action Aid International Kenya (AAIK); Africa Platform for Social protection (APSP); Africa Youth Trust; African Community Development Media (ACDM); African Network for the Prevention and Protection of Child Abuse and Neglect (ANPPCAN); Africog; Aga Khan Foundation (AKF); Akiba Uhaki Foundation; Amref Kenya; Children Legal Action Network (CLAN); Constitution & Reforms Education Consortium (CRECO); Diakonia Sweden – Kenya Country Program ; Diakonie Emergency Aid; East African Association of Grant Makers (EAAG); Elizabeth Glaser Paediatric & Aids Foundation; Federation of Women Lawyers (FIDA); Freedom House; Health NGO Network-HENNET; Independent Medico Legal Unit (IMLU); International Commission of Jurists (ICJ); International Institute for Legislative Affairs (ILA); International Institute of Rural Reconstruction (IIRR); Inter-Religious Council of Kenya (IRCK); Inuka Kenya Trust; Kenya Civil Society Congress; Kenya Climate Change Working Group; Kenya Community Development Trust (KCDF); Kenya Human Rights Commission(KHRC); Kenya Water and Sanitation CSO's Network ; Kenya Water for Health; Kituo cha Sheria ; Kenya Climate Change Working Group (KCCWG).National CBO Council; National Coalition of Human Rights Defenders (NCHRD - K); Oxfam GB; Pambazuko Foundation; Peace & Development Network Trust (PeaceNet); Plan International; The Cradle; The Institute for Social Accountability (TISA); Representatives from the International NGOs Country Directors Group; URAIA; Viwango and Poverty Eradication Network (PEN)-Secretariat.

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Public Benefit Organisations (PBO) Act 2013



CSO Reference Group & the Public Benefits Organisations (PBO) ACT

Several Civil Society Organisations (CSOs) in Kenya, under the umbrella of the [CSO Reference Group](#), have been spearheading a campaign to mobilise CSOs to participate in the development and implementation of a new enabling legal, regulatory and institutional framework for CSOs in Kenya that do public benefit work. This process has led to the development of an all inclusive ACT for CSOs engaged in public benefits activities, the [Public Benefits Organisations \(PBO\) ACT 2013](#).

A new enabling legal environment is essential as it will ensure good governance by the CSOs on the one hand, while protecting legitimate civil society activity on the other. It provides a conducive framework for the engagement of CSOs in the implementation of the new constitution.

The need for a new legislation for CSOs

The Bill of rights and the principle of the freedom of association as enshrined in the constitution allows all Kenyans to establish associations, including civil society organisations (CSOs), without necessarily registering them. Chapter 4 of the Constitution provides for the rights and fundamental freedoms for each and every individual, Article 19 (1) States that *“The Bill of Rights is an integral part of Kenya’s democratic state and is a framework for social, economic and cultural policies”*. Article 36 provides for the freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

Various laws including the NGO Coordination Act of 1990, the Companies Act Cap 486 (for Companies Limited by Guarantee), Societies Act CAP 108, Trustee Perpetual Succession Act CAP 164, and Trustees Act CAP 167 provide the registration of a diverse spectrum of the civil society organisations that do public benefit work.

However there exist gaps in the current legal and regulatory framework including:

- Multiple and overlapping, legal and regulatory regimes governing CSOs presents difficulties for those seeking a harmonised reporting framework;
- Difficulties in monitoring compliance and accountability by CSOs;
- The current CSO regulatory institutional mechanisms are centralised in Nairobi and presents challenges to the spirit of devolution as enshrined in the new constitution;
- The mechanisms and processes for self regulation for CSOs in Kenya have proved wanting;
- The current laws for CSOs do not explicitly address issues of leadership

and integrity as provided for in the Constitution;

- Absence of an independent body to provide checks and balances in cases where the self-regulatory mechanism has failed;
- Absence of complaints and dispute resolution mechanism for CSOs and their members;
- Lack of a general framework of principles for collaboration between government and CSOs.

The Government has also recognized some of these weaknesses through the Sessional Paper No. 1 of 2006 which recommends harmonization of the overlapping legislative Acts through a comprehensive review of legislation for CSOs in Kenya.

Consultation & Drafting Process

The [CSO Reference Group](#) undertook extensive consultations through national and regional CSO Leaders’ consultations workshops and various thematic meetings.

The drafting of the PBO ACT went through a professional process involving research on the nature of civil society and the history of CSO legislation in Kenya, comparative studies on other global legislations and new trends of international best practice, development of guiding principles and the production and refinement of various drafts leading to the final ACT.

What is the Public Benefit Organisations (PBO) ACT?

This is a new ACT to provide for the formations, operations and growth of Public Benefits Organisations (PBOs); to establish a regulatory and institutional framework within which Public Benefits Organisations can conduct their affairs and for such other connected purposes.

Goal

The Goal of the [Public Benefit Organisations Act 2013](#) is to advance a new legal, regulatory and institutional framework for Public Benefit Organisations (PBOs) in Kenya.

Objectives:

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

- To encourage public benefit organisations to maintain high standards of governance and management through effective self-regulation;
- To establish an effective regulatory and institutional framework for PBOs;
- To promote compliance by public benefit organisations with their legal and statutory obligations;
- To promote a spirit of co-operation and shared responsibility within government and among donors and other interested persons in their dealings with public benefit organisations.

Principles

1. Strong Public Benefits Organisations Sector promoting social welfare and improving the conditions and quality of life for the people of Kenya;
2. Adherence to and promotion of the values of the constitution of Kenya within the Public Benefits Organisations Sector;
3. High standards of governance, transparency and accountability by Public Benefit Organisations;
4. Enhance co-operation between PBOs, Government, Private Sectors and Development Partners;
5. Statutory and legal compliance by Public Benefit Organisations.

Key Highlights of the PBO ACT

- **Protection of the freedom of association:** The ACT is in line with the Spirit of Article 36 of the constitution which guarantees the freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. The implementation of the [Public Benefits Organisations \(PBO\) Act](#) will effectively contribute towards realization of these rights;
- **Basis for the existence of a variety of types of Civil Society Organisations (CSOs):** It allows different types and forms of CSOs doing public benefit work to operate under one single Act - the Public Benefit Organisations (PBO) Act;
- **Framework for collaboration between Government and PBOs:** Section 67 of the Act provides an institutional framework for principled partnership between Government and PBOs including at all levels;
- **Voluntary Self-regulation by PBOs:** Allows the Public Benefit Organisations to determine standards, certifications and adherence to professional code of conduct;
- **Complaints and Redress Mechanism:** Part V provides for the