

A woman with long black braided hair is speaking at a podium. She is wearing a patterned top with yellow, blue, and white designs, and multiple necklaces made of yellow, green, red, and white beads. A microphone is positioned in front of her. The background is blurred, showing a green and white striped pattern.

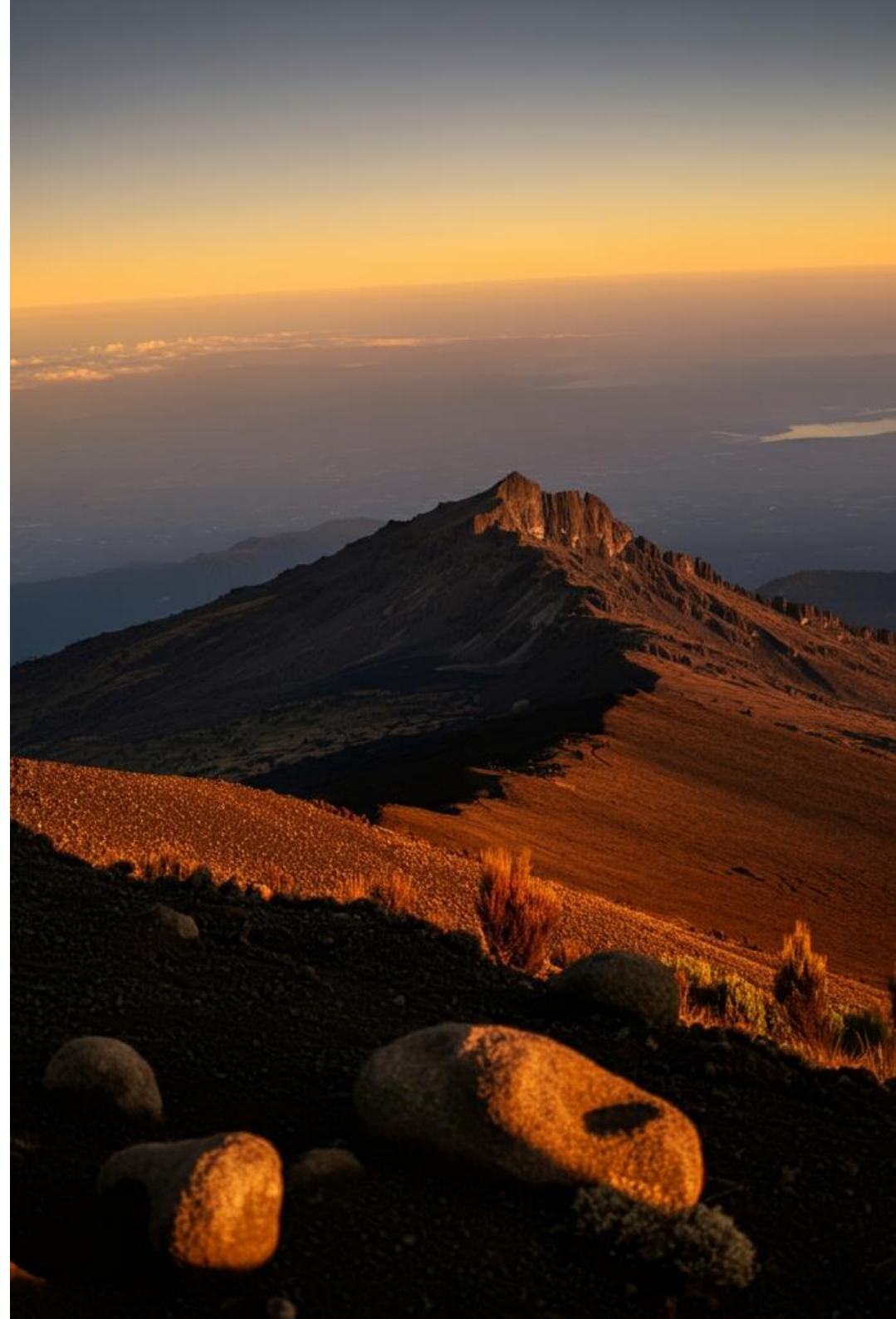
# Enactment Of The Public Benefits Organization Act (2013)

## Introduction

On 9 May 2024, the Cabinet Secretary for Interior and National Administration published Legal Notice 78 of 2024 (the “Notice”) which operationalized the Public Benefits Organisation Act, 2013 (the “PBO Act”) with effect from 14 May 2024 (the “Commencement Date”).

The enactment of the Act heralds a new era for non-profit entities engaging in public benefit activities within Kenya and promises a robust regulatory framework to govern their operations.

The PBO Act repeals and replaces the Non-Governmental Organisations Co-ordination Act, 1990 and introduces an extensive legal framework for the regulation of Public Benefit Organisations (“PBOs”) in Kenya.



# Highlights of the PBO Act

## 1. Transition from NGOs to PBOs

Non-Governmental Organisations (NGOs) will henceforth be known as ‘PBOs’. A PBO is defined as *‘a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is organized and operated locally, nationally or internationally, engages in public benefit activities and is registered as such by the Authority.*

*“Public benefit activities” under the PBO Act include:-*

- ▶ Enhancing or promoting the economic, environmental, social or cultural development;
- ▶ Protecting the environment; and
- ▶ Lobbying or advocating on issues of general public interest or the interest or well-being of the general public or a category of individuals or organizations.

## 4. New Requirement for International NGOs to have a Kenyan Authorized Agent

International PBOs (IPBOs) will be required to submit particulars of a local authorized agent, (a Kenyan citizen who is resident in Kenya) who will be the IPBO’s duly authorised legal representative for purposes of receiving official summonses, notices and inquiries on the behalf of the IPBO.

## 2. Change in Regulator

The regulator of the not-for profit sector changes from the Non-Governmental Organizations Co-ordination Board (“NGO Board”) to the Public Benefit Organizations Regulatory Authority (the “PBO Authority”) which takes over all the functions, rights, powers, liabilities and duties of the NGO Board effective from the Commencement Date. The current members of the NGO Board transition seamlessly into members of the PBO Authority.

The mandate of the PBO Authority includes registration and deregistration of PBOs, receiving and reviewing annual reports and basically overseeing the orderly performance of the not-for-profit sector.

## 5. Exemption of INGOs from Registration

International NGOs may be exempted from registration under the PBO Act and instead granted a permit to operate in Kenya if they do not intend to directly implement activities or programmes in Kenya or if they operate from Kenya to implement activities or programmes in another country.

## 3. To Register or not to Register under the PBO Act

As from the Commencement Date, all registered NGOs are deemed to be registered under the PBO Act but will be required to ‘re-register’ under the PBO Act within one (1) year (i.e. before 13th May 2025), from the Commencement Date. Their PBO status will cease to exist if they do not apply for registration under the PBO Act within thirty (30) days after a specific notice has been issued to them by the PBO Authority.

NGOs that were exempt from registration under the NGO Act are now required to apply for registration under the PBO Act within three (3) months from the Commencement Date.



## 6. Benefits of PBO Status

- ▶ **Streamlined Registration:** The Act expedites the registration process for PBOs, reducing bureaucratic delays and minimizing administrative discretion.
- ▶ **Tax Exemptions:** Registered PBOs enjoy exemptions from income tax, stamp duty, and court fees, as well as on Membership subscriptions. They also receive preferential treatment on VAT and customs duties.
- ▶ **Incentives for Donations:** There are special tax incentives for donations to PBOs, including those aimed at forming endowments.
- ▶ **Government Support:** PBOs that partner with the government can receive direct financing and preferential treatment in public procurement procedures.
- ▶ **Training and Capacity Building:** PBOs have access to training courses offered by government institutions, enhancing their operational capabilities.

## 7. Establishment of PBO Disputes Tribunal

International NGOs may be exempted from registration under the PBO Act and instead granted a permit to operate in Kenya if they do not intend to directly implement activities or programmes in Kenya or if they operate from Kenya to implement activities or programmes in another country.

## 8. Establishment of the National Federation of Public Benefits Organizations

The National Federation of Public Benefits Organisations is an umbrella organisation of all registered PBOs and self-regulation forums. The federations transitioned from the previous NGO Council. Its functions include promoting self-regulation, coordinating and monitoring the self-regulation forums registered under the PBO Act.

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## BDO Commentary

The Act was originally gazetted in January 2013 but was never operationalised despite several engagements by government with affected stakeholders. In line with the original intentions, the PBO Act proposes to revamp the regulatory framework for civil societies in Kenya and to create an enabling environment for their establishment and operations.

Among its notable original objectives, the PBO Act promised a simplified interaction with the revenue authority's tax administration platform by bringing together entities whose operations were charitable and of public benefit in nature.

The enactment of the PBO Act is also seen as a key step in meeting the increasingly stringent monitoring and reporting requirements by the Financial Action Task Force (FATF) targeting money-laundering and illicit financing concerns, that saw Kenya placed on the FATF grey list in February 2024.

While there remain several pending related guidelines before effective operationalisation of the PBO Act, its enactment is a welcome development in the regulation of an all important not-for-profit sector which - to many Kenyans in the marginalised areas - is the only Government they know. The outgoing NGO Act was increasingly seen as being out of step with the needs and emerging trends within the charitable entity space.



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