COMMENTS ON THE DRAFT PUBLIC BENEFIT ORGANIZATIONS REGULATIONS 2025

SECTION OF THE REGULATION	COMMENT/PROPOSED AMENDMENT	RATIONALE
PART I - PRELIMINARY		
Note: (i) "Act" means the Public Benefit Organizations Act No. 18 of 2013. (ii) "PBOs" means Public Benefit Organizations.		
Regulation 2 - Interpretation	Amend the following: "forum" means a forum of public benefit organizations recognized in accordance with regulation 24 Amend to: "forum" means a forum of public benefit organizations recognized in accordance with regulation 21 (1) and (2).	Regulation 24 is wrongly cited; it refers to the process of application for recognition of a federation of forum. Regulation 21 is the correct citation. It provides the definition of a forum.
Regulation 2 - Interpretation	Amend the following: "Register" means the Register of Public Benefit Organizations in accordance with regulation 36 Amend to: "Register" means the Register of Public Benefit Organizations in accordance with regulation 38	Regulation 36 is wrongly cited; it refers to engagement in economic activities. Regulation 28 is the correct citation. It refers to the register of public benefit organizations to be maintained by the Authority.
Regulation 2 - Interpretation	Proposal to add/include new provision in interpretation regulation. Proposed new addition below is to interpret S. 3 (a) (i) 3(b) and 4(1) of the Act. Add: "conducive environment" means an enabling physical, virtual, legal, regulatory, and policy environment where public benefits organizations can securely operate and secure funding for their work.	Adopting this proposed interpretation strengthens the objects of the Act in S. 3(a) of the Act by ensuring that PBOs can meet the diverse needs of the people of Kenya through operating, participating and communicating without undue hinderance. This interpretation further ensures that the state holds its positive obligation to protect, respect and facilitate the

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		fundamental rights enshrined in Article(s) 33, 34, 35, 36 and 37 of the Constitution of Kenya 2010.
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PART I - PRELIMINARY		
Regulation 2 - Interpretation	Proposal to add/include new provision in interpretation regulation. Proposed new addition below interprets S. 3 (a) (iv) of the Act. Add: "access to information" has the meaning, purpose and operationalization prescribed in Article 34 of the Constitution of Kenya 2010 and the Access to Information Act 2016.	The obligation in S. 3(a) (iv) of the PBO Act to "*create an environment within which the public may have access to information concerning registered public benefit organisations*" must give effect to the right of access to information by citizens as provided under Article 35 of the Constitution and the Access to Information (ATI Act) 2016. The constitutional provision and the ATI Act provide the legal framework for all public entities and private bodies to proactively disclose information that they hold, and to provide information on request in line with the constitutional principles.
New provision proposed for Part 1 section of the regulations- Preliminary. Proposed regulation title - "Objects and Purposes of the Act."	Proposal to add/include new provision to operationalize S. 4(2) of the Act which requires every State organ to co-ordinate the implementation of its policies and measures in a manner designed to promote, support and provide an enabling environment for public benefit organizations to perform their functions. Add: The Authority will collaborate with the Federation to produce National Guidelines on the Implementation of Policies towards an Enabling Legal Environment for Public Benefits Organizations.	The Act in S. 4(2) has created a new obligation on every state organ to implement its policies in a matter that supports and promotes an enabling environment for public benefits organizations. This being a new obligation created by the Act, there is currently no standardized guidance to support state organs to fulfill their legal obligation with this regard. This creates potential liability for all state organs arising from failure to meet the aforesaid obligation. This is in the absence of existing technical expertise on policy implementation which supports an enabling environment for public benefits organisations. The development of such Guidelines will support State organs to have a reference document to guide their implementation and measures as required, while mitigating their liability for failure to operationalise the same. '

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SECTION OF THE REGULATION	**COMMENT/PROPOSED AMENDMENT**	**RATIONALE**
PART II - PRE-REQUISITES FOR REGISTRATION		
Regulation 4(3) – Search and Reservation of a Name	Amend the following: (3) Upon receipt of the application under sub-regulation (1), the Authority shall conduct a search on the proposed name of the public benefit organization Amend to: (3) Upon receipt of the application under sub-regulation (1), the Authority shall conduct a search within 7 working days on the proposed name of the public benefit organization	In order to protect and operationalise freedom of association as enshrined in Article 36 of the Constitution of Kenya, the process of registration process of a PBO must be as predictable and timely as possible. This proposal ensures a feasible timeline by which the Authority must undertake and complete the search process to facilitate timely registration of a PBO. A definitive timeline also ensures that registration will not be withheld unreasonably, contrary to provisions of Article 36 of the Constitution of Kenya.
Regulation 5 (c) – Prohibited Names	Delete entirely regulation 5 (c) which states – "in the opinion of the Authority, the name is offensive or undesirable."	This is a problematic provision as it is entirely subjective with no legal parameters guiding the decision of the Authority with this regard. Further, "opinion" is not a feasible legal threshold, and the terms "offensive or undesirable" are subject to wide interpretation. Therefore, it is not an admissible restriction on the ability to establish an association, namely a public benefit organization. It suffices for the purposes of prohibition of names, that there is a regulation (5(b) which provides that the Authority will not register a name that would constitute an offence under the Act or any other written law. This has a clear and predictable legal basis for refusal to register a particular name.
Regulation 5 (d) – Prohibited Names	Amend the following: in the opinion of the Authority, the name is likely to give the impression that the public benefit	"Likely to give the impression" is not a feasible threshold by which to decide on the registration process of a PBO. The proposed edited language will strengthen the regulation to

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	organization is connected to a state organ, a county government or any other public entity. Amend to: the proposed name is similar to that of a state organ, a county government or any other public entity.	improve anticipatory compliance of an applicant and, promote clarity in potential association with names public entities.
SECTION OF THE REGULATION	**COMMENT/PROPOSED AMENDMENT**	**RATIONALE**
PART III - REGISTRATION OF NATIONAL PUBLIC BENEFIT ORGANIZATION		
Regulation 8(4)- Application for registration as a national organization.	Amend the following: the particulars of the office bearers or directors of the public benefit organization, a third of whom must be Kenyan nationals and resident in Kenya Amend to: the particulars of the office bearers or directors of the public benefit organization, a third of whom must be Kenyan nationals or permanent residents in Kenya as per the provisions Kenya Citizenship and Immigration Act, 2011; and resident in Kenya	Article 31 (1) provides that every person has the right to freedom of association which includes th3e right to form an association of any kind. The proposed regulation wrongly limits the freedom to associate in Kenya to citizens of Kenya. Kenya is host to non-citizen refugees, immigrants, spouses and families etc who have lawfully been granted permanent resident status by the Directorate of Immigration Services. Such are expected to lawfully abide by and benefit from the protections and provisions of the Constitution of Kenya 2010. This includes their fundamental freedom to association as well as to serve Kenya's public interest benefit needs freely and without unlawful hinderance.
Regulation 8(5) and 10(4) - Application for registration as a national organization and Application for bestowment of public benefit organization status	Amend the following: details of the physical address and postal address of the organization Amend to: details of the digital online presence or physical address, and postal address of the organization. For the purposes of service of any legal documents as required by any Kenyan law, digital organizations must provide a physical address for service of legal documents.	The proposed regulation fails to recognise public interest work that is fully digitised. There are several digital organisations that provide digital services only for youth, human rights (including digital rights), information and other public benefit areas as provided in the Sixth Schedule in the Act. Such organisations will be dis-incentivised from registering under the Act with provision only for a physical address for the application for registration process. Associations have the right to exist exclusively online and should be supported by the Authority as the regulator to conduct their activities in the

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		form of their choice, including through online and electronic means.
PART IV — BESTOWMENT OF PUBLIC BENEFIT ORGANIZATION STATUS		
Regulation 9 and 10 - Eligibility for bestowment of public benefit organization status.	Amend the cited regulation 9 to include: i. Express provision on whether bestowment accords the same rights, responsibilities, accountability and benefits to an organisation as registration. ii. Provision on whether an organisation bestowed with PBO status under the Act and is registered under any another law, the bestowment supersedes any prior registration of that organization under any other law in Kenya. iii. Period for which bestowment status is valid before an organisation is required to fully register under the Act iv. Provision and basis for annual revision, review and renewal of bestowment status	The current provisions in the Act and regulations for bestowment of public benefit organizations status are vague and unclear on the cited elements in the previous column. As are the rights, responsibilities, accountability and benefits of organisations which have been bestowed with public interest benefit status as opposed to registration. Bestowment status must be provided for and implemented in an open, clear and unbiased manner with a clear understanding of its purpose as provided in S.7 of the Act.
SECTION OF THE REGULATION	**COMMENT/PROPOSED AMENDMENT**	**RATIONALE**
Regulation 18 -Restrictions Upon Suspension	Proposal to add/include new provision to replace regulation 18 (a) with the following text: Where an organization whose registration is suspended or cancelled under this regulation appeals under section 19 of the Act, the organization shall not be restricted from continuing with its operations until the determination of the appeal.	This proposal notes that if there is still a legal remedy available to resolve a matter by application of the law, a PBO that has not exhausted the appeals route should be allowed to continue until the final determination of an appeal. It is the case that such an appeal may potentially correct an error or overturn a decision of a previous court.
PART VII- RECOGNITION OF FORUMS AND FEDERATION OF FORUMS		
Regulation 24 (2) (b) - Application for recognition of a federation of forums.	Proposal to add/include new provision to regulation 24, to read as 24(c) as below:	For consistency in the regulations, similar to regulation 32(b) which provides an opportunity for PBOs to “rectify the failure” upon deregistration, so the same opportunity for rectification should be provided upon refusal of recognition of a federation of forums.

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	Give the public benefit organization an opportunity to be heard and rectify the matters raised in the rejection of the application for recognition as a federation of forums.	
ESTABLISHMENT, POWERS AND FUNCTIONS OF THE AUTHORITY		
No regulation. New provision being proposed to operationalise S. 42 (1) (c) of the Act	Proposal to add/include new provision under heading "Establishment, Powers and Functions of the Authority" Proposed regulation text: The Authority, in consultation with the PBO sector, shall review Sessional Paper No. 01 of 2006 on Non-Governmental Organizations and update it to align with the provisions of the Act that now govern the sector.	S. 42 (1) (c) of the Act provides one of the functions of the Authority as being the interpretation of the national policy on public benefit organizations to assist in its smooth implementation and observance by Government ministries, departments and agencies at various levels. This proposed regulation operationalizes this function of the Authority, ensuring the legal framework is continually up to date and is coherent with the law (and vice versa).
SECTION OF THE REGULATION	**COMMENT/PROPOSED AMENDMENT**	**RATIONALE**
PART X — MISCELLANEOUS PROVISION		
Regulation 36 – Engaging in economic activities	Proposal to add new provision 36(3) to operationalise the Second Schedule (1) of the Act to provide for the process of tax 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 v. court fees vi. 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	The tax exemptions were crafted as one of the provisions that would not only support the domestic sustainability of the sector, but also to incentivise migration to the Act as one of the benefits of registration under the Act. In order to properly operationalise this provided benefits of registering under the Act, it is imperative that the process of tax exemptions be thoroughly canvassed and systematically provided for in the regulations in consultation with stakeholders and the relevant public institutions, key being the Kenya Revenue Authority (KRA).

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	vii. incentives for donations by legal and natural persons viii. employment tax preferences and ix. special tax incentives for donations to form endowments, prudent investment policies, etc	
FIRST SCHEDULE - FEES		
1 - Application for a name search and reservation of a proposed name for a public benefit organization	Amend fee for application for a name search and reservation of a proposed name for a public benefit organization Currently provided as Kshs 2000/= Propose amend to: Kshs1200/= as per calculation provided in the rationale column.	On a comparative basis with other legal regimes search and reservation of name costs, the proposed costs are disproportionally high and should be revised downwards to match other public institutions reasonable fees which provide for example: **Business Registration Service fees:** Official search (business names) Kshs 250 Registration of business name: Kshs 950
SECTION OF THE REGULATION	**COMMENT/PROPOSED AMENDMENT**	**RATIONALE**
1 - Application for extension of a proposed name for a public benefit organization	Amend fee for application for extension of a proposed name for a public benefit organization Currently provided as Kshs 2000/= Propose amend to: Kshs 800/= as per calculation provided in the rationale column.	Similar comparative basis with other public institutions as above. **Business Registration Service fees:** Change of name of Company/Business Name/Limited Liability Partnership = Kshs 800. This is a similar process in terms of input/output (of not more so rigorous) as reservation of name and the cost is reasonable compar3ed to the proposed cost in the First Schedule of Ksh 2000/=
1 - Application for registration as a national public benefit organization	Amend fee for application for registration as a national public benefit organization Currently provided as Kshs 20000/= Propose amend to: Kshs 10,000/= as per comparative fee provided in the rationale column.	Similar comparative basis with other public institutions as above. **Business Registration Service fees:** Registration of a company ltd by guarantee = 10,000

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1 - Application for bestowment of public benefit organization status	Amend fee for application for bestowment of public benefit organization status Currently provided as Kshs 20000/= Propose amend to: Kshs 10,000/= as per comparative fee in the rationale column.	Similar comparative basis with other public institutions as above. **Business Registration Service fees:** Registration of a company ltd by guarantee = 10,000
1 - Application for registration as an international public benefit organization	Amend fee for application for registration as an international public benefit organization Currently provided as Kshs 20000/= Propose amend to: Kshs 10,000/= as per comparative fee in the rationale column.	Similar comparative basis with other public institutions as above. **Business Registration Service fees:** Registration of a foreign company = Ksh 7550 Registration of a company ltd by guarantee = 10,000
SECTION OF THE REGULATION	**COMMENT/PROPOSED AMENDMENT**	**RATIONALE**
FIRST SCHEDULE - FEES		
1 - Application for recognition of a forum and federation of forums of public benefit organizations	Amend fee for application for application for recognition of a forum of public benefit organizations Currently provided as Kshs 20000/= Propose amend to: Kshs 5,000/= as per rationale provided	Similar comparative basis with other public institutions as above. **Business Registration Service fees:** Registration of a company ltd by guarantee = 10,000 The application is not for registration, rather for recognition therefore should not be the same expense but rather less costly. This proposal is also mindful that organisations will also have potentially paid individual fees to register under this Act therefore high additional fees are disproportionate.
1 - Application for filing of annual returns for a	Amend fee for application for filing of annual returns for a registered public benefit organization Currently provided as Kshs 4000/=	Similar comparative basis with other public institutions as above. **Business Registration Service fees:**

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registered public benefit organization	Propose amend to: Kshs 1,000/= as per rationale provided	Filing fee annual returns = 1,000
1- Notification of material changes in a public benefit organization	Amend fee for notification of material changes in a public benefit organization Currently provided as Kshs 15,000/= Propose amend to: Kshs 2,000/= as per rationale provided	Similar comparative basis with other public institutions as above. **Business Registration Service fees:** Change of Particulars of LLP = 2,000
1-Application for a replacement or certified copy of a certificate of registration or permit of registrations	Amend fee for application for a replacement or certified copy of a certificate of registration or permit of registration Currently provided as Kshs 5,000/= Propose amend to: Kshs 1,000/= as per rationale provided	A replacement or certified copy of a certificate of registration is not a new process. The PBO's details and registration is fully complete, this is simply a request for re-issuing the certificate or permit/requesting a certified copy. Therefore, a nominal admin fee and cost of hard copy document is reasonably placed at the proposed amended fee.

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