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ELEVATING PHILANTHROPY

Creating a Formal, Predictable and Transparent Legal Framework for Public Benefit Organisations: **Kenya's** Public Benefit Organizations Act

TIER 1
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Why this case matters

Kenya's Public Benefit Organizations (PBO) Act shows how legal reform can create a more predictable and transparent environment for civil society and philanthropy. However, it also highlights that passing a law is not enough. Delays in implementation, restrictive amendments and complex compliance requirements can limit impact.

Kenya's story of change

The PBO Act shows how legal reform can create a more predictable and transparent environment for the social sector and philanthropy. By clarifying rules on registration, governance and funding, the Act was designed to reduce risk and strengthen accountability.

However, the case also highlights that legal reform alone is not enough. Although the law was passed in 2013, it remained dormant for over a decade before being brought into force in May 2024. This delay limited its impact and created prolonged uncertainty for organisations.

Relevant EE Guide recommendations

This case illustrates the following recommendation in practice:

- **Rec. 1:** Legally recognise philanthropy as a public-benefit development actor

Policy lever

Modernised legal framework for PBOs, including clearer rules for registration, governance, funding and operations.

Kenya's experience illustrates that while legal frameworks are essential, delays in implementation, restrictive amendments and overly complex regulation can undermine their effectiveness. To fully support philanthropy, reforms must be accompanied by timely implementation, adequate resourcing and safeguards for civic autonomy.

Country snapshot: Kenya

Country overview	▸ Lower-middle-income country with a generally open philanthropic environment ▸ Global Philanthropy Environment Index (GPEI) Score (2025): 3.47/5 ▸ Philanthropy sector is growing but still evolving in structure and regulation
Intervention type	▸ Regulatory reform to establish a formal legal framework for PBOs
Outcome type	▸ Improved operating environment through greater legal clarity and predictability
Key challenges/barriers prior to the intervention	▸ Fragmented and outdated legal provisions created an inconsistent regulatory environment ▸ Overlapping rules increased administrative complexity and reduced the efficiency of oversight ▸ Discretionary decision-making in registration and compliance weakened predictability, legal certainty and trust

Introduction: the background

Prior to the PBO Act, Kenya's non-profit sector was governed by the Non-Governmental Organizations Co-ordination Act (1990), which was widely seen as fragmented, bureaucratic and reliant on discretionary decision-making in the registration and compliance processes. This created an unpredictable operating environment and raised concerns about constraints on the social sector's independence and effectiveness.

The 2010 Kenyan Constitution strengthened civil liberties, especially freedoms of association and assembly, increasing pressure to align the regulatory framework with democratic principles and international standards. Social sector groups, legal advocates and umbrella networks called for a more transparent and predictable system that would support civic space and protect organisational autonomy.

In response, Parliament passed the Public Benefit Organizations Act, 2013. However, its implementation was contingent on an executive gazette notice, allowing the Government to delay its activation. As a result, the law remained dormant for over a decade, and the previous regulatory framework continued to apply.

Successive administrations did not bring the law into force, despite sustained advocacy from the social sector. This prolonged delay limited progress towards a more enabling environment and maintained regulatory uncertainty for public benefit organisations.

On May 9, 2024, the Government issued Legal Notice No. 78 of 2024, bringing the Act into effect on 14 May 2024. This marked the transition to a modernised legal framework for the social sector in Kenya.

Intervention: the what

The PBO Act establishes a single legal framework for the recognition, registration, regulation and operation of public benefit organisations in Kenya. It replaces a fragmented system with a more predictable, rights-based approach, while clarifying rules on oversight, dispute resolution, advocacy and access to tax-related benefits. The table below summarises the Act's main features and their relevance to the enabling environment for philanthropy and the social sector.

Element	Description
Regulatory oversight	▶ Establishes the PBO Regulatory Authority (Authority) to oversee registration and regulation
Definition of a PBO	▶ A PBO is a voluntary membership or non-membership organisation that is autonomous, non-partisan, not-for-profit and which: ▶ operates locally, nationally or internationally ▶ engages in public benefit activities as set out in the Sixth Schedule ▶ is registered as such by the Authority
Government's role	▶ Commits the Government to promote an enabling environment for PBOs and coordinate policies that support their operations and collaboration
Constitutional protection	▶ Reinforces the constitutional right to freedom of association
Purpose and extent	▶ Establishes a single, modern legal framework for regulating public benefit organisations. Core objectives include: ▶ promoting an enabling environment for the social sector ▶ replacing the restrictive NGO Act (1990) with a rights-based, predictable system ▶ strengthening accountability, transparency and good governance
Registration framework	▶ Introduces clearer registration procedures and timelines to reduce discretionary decision-making ▶ Provides legal personality, enabling PBOs to own property, enter contracts, employ staff and operate within a defined legal framework
Tax exemptions	▶ Provides tax exemptions and incentives for registered PBOs and donations, including income, stamp duty, VAT and customs duties

Permissible activities	▶ Allows PBOs to engage in research, advocacy, education and publication, including commentary on government policy and public affairs ▶ Prohibits direct partisan campaigning or support for specific candidates
Self-regulation and coordination	▶ Provides for the establishment of a National Federation of PBOs to support self-regulation and sector coordination
Relevance	▶ Introduces incentives to encourage donations and support for public benefit work ▶ Aligns Kenya's regulatory framework more closely with international standards while reducing bureaucratic barriers

Implementation: the how

Kenya's PBO Act moved from advocacy to legislation, and eventually to implementation, through a series of key decision points:

- **Early advocacy built momentum for reform:** From around 2009, social sector actors began pushing for reform of the outdated NGO framework, highlighting its inconsistency with the 2010 Constitution and the need for a more predictable, rights-based system. This early phase was important because it established reform as both a legal and governance issue, rather than only a sectoral demand. Networks such as PEN, the Kenya Human Rights Commission (KHRC) and the Civil Society Reference Group played a central role in shaping and advancing this agenda.
- **Legislative sponsorship enabled progress:** In 2012, Hon. Sophia Abdi Noor introduced the PBO Bill as a Private Member's Bill following consultations with government and sector stakeholders. This created a formal pathway into Parliament and translated advocacy into legislative action.
- **Restrictive amendments were resisted:** Attempts in 2013 to introduce provisions limiting foreign funding and increasing executive control were withdrawn after sustained opposition from social sector actors.
- **Delayed commencement limited impact:** Although the Act was passed in 2013, implementation was delayed for over a decade because the required gazette notice was not issued, leaving the previous regulatory framework in place.
- **Implementation began after formal activation:** A 2016 High Court ruling ordered the Government to set a commencement date, but the Act only came into force in May 2024 through Legal Notice No. 78. This enabled the PBO Regulatory Authority to begin registration, oversight and implementation under the new framework.

Role of key actors

A range of social sector and philanthropic actors played a central role in advancing the passage and eventual implementation of the PBO Act.

Social sector actors

Social sector organisations led the reform effort, beginning with early advocacy to replace the outdated NGO framework and continuing through to implementation.

- **Partnerships 4 Empowerment and Networking in Kenya (PEN):** Initiated early review processes, including work on Sessional Paper No. 1 of 2006, and helped catalyse the Civil Society Organizations Reference Group (CSO-RG), which later became the Civil Society Reference Group (CSRG). PEN also worked with other networks to address numerous bottlenecks until 2013, when the PBO Bill received executive approval.
- **Civil Society Reference Group (CSRG):** Brought together organisations across sectors to draft the PBO Bill, coordinate consultations and sustain advocacy. The group engaged over 1,500 leaders across thematic and regional networks, helping build broad-based support for reform.
- **Civic Freedoms Forum (CFF):** Played a key role during the implementation phase by mobilising organisations to identify legal gaps and advocate for activation of the Act. Alongside partners such as PEN Kenya and KHRC, it helped coordinate sector-wide advocacy despite repeated delays.

Philanthropic actors

Philanthropic organisations helped connect the reform to broader questions of donor confidence, incentives and the enabling environment for giving.

- **Kenya Community Development Foundation (KCDF):** Engaged in stakeholder discussions with the PBO Regulatory Authority and other sector actors to support implementation of the new framework.
- **East Africa Philanthropy Network (EAPN):** Helped expand the conversation by bringing philanthropic actors into the reform process and promoting more inclusive engagement. Its work focused on:
  - highlighting the implications of the PBO Act for accountability, incentives and coordinated giving
  - advocating for an enabling environment that supports philanthropy alongside the wider social sector
  - connecting philanthropy networks with broader coalitions to strengthen advocacy for the PBO Act's activation and implementation

Outcomes and early signals of impact

The PBO Act has begun to improve the operating environment for philanthropic organisations by establishing a clearer and more transparent framework for registration and governance.

- **Improved regulatory clarity and predictability:** Clearer registration procedures and timelines have reduced discretionary decision-making and administrative uncertainty.

- **Reduced bureaucratic barriers:** A more structured system has streamlined processes and improved oversight consistency.
- **Strengthened donor confidence:** The framework provides access to tax exemptions (including income tax, VAT, customs duty and stamp duty) for compliant organisations, reinforcing credibility and trust.
- **Greater financial sustainability:** The Act allows PBOs to undertake income-generating activities, enabling them to diversify funding beyond traditional donor sources.

While still in early implementation, these changes signal progress toward a more enabling and predictable environment for philanthropy and the wider social sector.

Caveats for policymakers

While Kenya's PBO Act created a stronger legal foundation for the social sector and philanthropy, its benefits were delayed for more than a decade. Although enacted in 2013, the law only came into force in May 2024, meaning its intended gains in regulatory clarity, transparency and donor confidence remained largely unrealised for many years. The case highlights that passing an enabling law is not enough: unless implementation follows in a timely and credible way, even well-designed reforms may have little practical effect.

Subsequent implementation challenges further illustrate how delays can compound reform risks.

- **Prolonged delay weakened impact:** The 11-year gap between enactment and commencement limited the law's practical value and prolonged regulatory uncertainty.
- **Transition requirements created friction:** Requirements for existing organisations to re-register under the new framework triggered policy debate and legal challenges, slowing adoption.
- **Provisions became outdated or misaligned:** By the time implementation began, some elements of the law no longer reflected sector realities, including rules related to surplus retention, organisational recognition and the alignment between registration and tax treatment.

In June 2025, the High Court ruled that several provisions of the Act were unconstitutional and ordered:

- automatic transition of existing organisations into the PBO framework without requiring re-registration
- removal of mandatory disclosure requirements of personal data of members and donors
- elimination of compulsory affiliation with umbrella bodies, reinforcing freedom of association

In response, the Government issued draft regulations in June 2025 to guide implementation and oversight, signalling ongoing efforts to strengthen the enabling environment for philanthropy in Kenya.

Lessons for policymakers

Kenya's experience shows that legal reform can improve the enabling environment for philanthropy and the social sector, but only if it is supported by timely implementation, administrative coordination and proportionate regulation. The key challenge for governments is not just to pass a new law, but to ensure that legal, fiscal and regulatory systems function coherently in practice.

- **Secure credible legislative champions:** Effective reform requires champions within Parliament who can navigate political dynamics. In Kenya, Hon. Sophia Abdi Noor played a critical role in advancing the PBO Bill and bridging advocacy and legislative processes.
- **Link legal recognition to tax incentives:** Aligning formal recognition of organisations with clear tax benefits can help unlock philanthropic capital, attract donors and support more structured, long-term giving.
- **Ensure legal status and incentives work together:** Governments should design legal and fiscal frameworks in tandem to strengthen donor confidence and enable organisations to operate transparently and effectively.
- **Minimise disconnects between registration and tax treatment:** Where legal recognition does not automatically trigger tax-exempt status, additional administrative steps can delay engagement and reduce impact. Governments should minimise this disconnect wherever possible.
- **Avoid overly complex compliance requirements:** Excessive reporting obligations or rigid governance rules can place disproportionate burdens on organisations, particularly smaller ones, and slow implementation.
- **Plan implementation from the outset:** Governments should treat implementation as a core part of reform design. Kenya's 11-year delay illustrates how the absence of a clear implementation strategy can undermine even well-designed legislation.
- **Coordinate regulatory and fiscal authorities:** Close alignment between sector regulators and tax authorities is essential to avoid fragmentation and ensure that reforms operate effectively in practice.

Final reflections

Kenya's PBO Act represents a significant step towards creating a more enabling legal environment for philanthropy and the social sector, but its impact has been shaped by a complex and contested implementation process. The Act modernises regulation, clarifies governance and funding rules, and affirms the public-benefit role of organisations, all of which can strengthen accountability and donor confidence.

At the same time, the 11-year delay in implementation, attempts to introduce restrictive amendments, and the concentration of decision-making power within the executive highlight ongoing tensions between state oversight and organisational autonomy.

Kenya's experience shows that while legal frameworks can create the foundation for a stronger enabling environment, their effectiveness ultimately depends on political will, timely implementation and sustained engagement from social sector actors.

Annex

Timeline of events

Year	Event
Prior to the Act	
2009	▸ Social sector actors, including PEN and KHRC, began calling for reform of the NGO Act
Passing of law	
2012	▸ April: Hon. Sophia Abdi Noor introduces the PBO Bill in Parliament ▸ August: Stakeholder retreat (Naivasha) integrates sector input into the Bill ▸ December: Bill passes Third Reading and receives final parliamentary approval
2013	▸ January: President Mwai Kibaki assents to the Bill; the PBO Act becomes law ▸ October: Proposed amendments seek to restrict funding and expand executive control ▸ December: Amendments withdrawn following sustained advocacy
2016	▸ High Court orders commencement of the Act
2013-2024	▸ Human rights organisations and coalitions continue to advocate for commencement of the Act
Commencement of law	
2024	▸ President William Ruto brings the PBO Act into force through Legal Notice No. 78 ▸ The PBO Act becomes operational on 14 May 2024, more than a decade after enactment
Implementation challenges	
2025	▸ Only around 4,000 of an estimated 14,000 organisations had complied with new requirements by mid-2025 ▸ Government extends compliance deadline to May 2026 (CDH, 2025) ▸ Court rulings strike down some provisions, requiring regulatory revisions ▸ Draft PBO Regulations undergo further revision following public consultation

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Interview

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