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REPORT OF THE COMMITTEE ON  
**THE REVIEW OF THE SOCIETIES  
ACT CAP 108 LAWS OF KENYA**



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# REPORT OF THE COMMITTEE ON **THE REVIEW OF THE SOCIETIES ACT CAP 108 LAWS OF KENYA**

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**Chairperson: Njoki Kahiga, OGW**

Presented to:

**The Hon. Attorney-General Professor Githu Muigai, EGH, SC**

November 2015



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# FOREWORD

The reform of the Societies Act (Cap108) together with all related statutes, falls within the wider statutory mandate of the Kenya Law Reform Commission, as stipulated under section 6 of the Kenya Law Reform Commission Act and section 5 of the County Governments Act and includes:

- (a) keeping under review all the law and recommend its reform to ensure—
  - (i) the law conforms to the letter and spirit of the Constitution;
  - (ii) the law systematically develops in compliance with the values and principles enshrined in the Constitution;
  - (iii) the law is, among others, consistent, harmonized, just, simple, accessible, modern and cost-effective in application;
  - (iv) the respect for and observance of treaty obligations in relation to international instruments that constitute part of the laws of Kenya by virtue of Articles 2(5) and (6) of the Constitution;
  - (v) the public is kept informed of review or proposed reviews of any laws; and
  - (vi) an update of all laws passed and reviewed by Parliament.
- (b) working with the Attorney-General and the Commission for the Implementation of the Constitution in preparing for tabling, in Parliament, the legislation and administrative procedures required to implement the Constitution;
- (c) providing advice, technical assistance and information to the national and county governments with regard to the reform or amendment of a branch of the law;
- (d) upon request or on its own motion, undertaking research and comparative studies relating to law reform;
- (e) formulating and implementing programmes, plans and actions for the effective reform of laws and administrative procedures at national and county government levels;
- (f) consulting and collaborating with State and non-State organs, departments or agencies in the formulation of legislation to give effect to the social, economic and political policies for the time being in force;
- (g) formulating, by means of proposed Bills or otherwise, any proposals for reform of national or county government legislation;
- (h) upon request or on its own motion, advising the national or county governments on the review and reform of their legislation;
- (i) undertaking public education on matters relating to law reform; and
- (j) performing such other functions as may be prescribed by the Constitution, this Act or any other written law.



In view of the above stated mandate, the Commission is more than pleased to have developed the Draft Associations Bill (2015) as a single legislation encompassing all the aspects and issues arising out of the entire not-for-profit sector. The multi-sectoral committee set up by the Commission to accomplish this task was for instance, naturally inclined to bringing some modicum of harmony within the sector by integrating and embedding precepts and norms and practices which cut across all the various substantive legislation regulating the sector broadly.

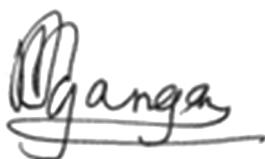
I note with satisfaction that the Committee has come up with a law that brings together the many forms of societies or associations for this is expected to result in the efficient management of the not-for-profit sector and in particular the registration and regulation of a sector that was threatening to be uncontrollable.

It is expected that the new Associations (Registration and Incorporation) Act will consolidate and replace all the existing legal regimes namely: the PBO Act, the Trustee (Perpetual Succession) Act and all the other offshoots of the original law that seem to contribute to apparent disorder in the registration and regulations of the intended associations.

The realization of a legal regime that is modern and responsive to the needs, values and aspiration of the people of Kenya, especially in the area of welfare and community associations will by no means be a mean achievement.

The fact that these laws regulate matters of personal law, customs and religious aspects of various communities, groups of persons and other forms of organizations, calls for a very cautious approach now and during the subsequent development of the proposed Bill immediately it is officially handed over. Indeed we need to more focus on the reasons why some of these legislations have not been enacted, amended or reviewed for so many years and devise appropriate strategic measures to have them find favour in the eyes of the consumers and implementers alike, including parliamentarians.

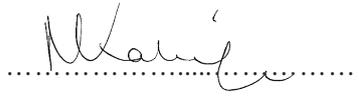
We, however, take refuge in the fact that, there exists substantial jurisprudence and a wide range of proposals for reform in the not-for-profit sector both in Kenya and internationally, normatively and in research and academic papers and reports.



**Mbage Ng'ang'a**

**Chairperson, Kenya Law Reform Commission**

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| 2. | <b>Mary Wairagu</b>      | Representative Department of Justice and Commissioner (KLRC) - Member    |    |
| 3. | <b>Linda Murila</b>      | Representative Attorney-General and Commissioner (KLRC) - Member         |    |
| 4. | <b>Sussane Lutta</b>     | Representative of Registrar General                                      |    |
| 5. | <b>Fedson Orare</b>      | Representative Ministry of Lands, Housing and Urban Development - Member |    |
| 6. | <b>James Nyiha</b>       | Representative LSK - Member  |   |
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## ACKNOWLEDGEMENT

The Kenya Law Reform Commission wishes to acknowledge the contribution of the following persons without whose help and support we will not have successfully completed this task up to and including the writing of this report:

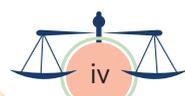
First, we are heavily indebted to the Chairperson of the Kenya Law Reform Commission, Mr. Mbage Ng'ang'a, for his invaluable support and tireless dedication throughout this process. We are entirely grateful for his guidance which laid the foundations for this project.

We also express profound gratitude to the chairperson of the committee, Commissioner Njoki Kahiga, OGW and her entire team for their invaluable contribution and tireless dedication throughout this process.

Similarly, we thank the Secretary/C.E.O. of the Kenya Law Reform Commission and by extension the entire secretariat for their unparalleled commitment and critical help in co-coordinating and organizing our meetings and workshops and for mobilizing the stakeholders to attend and participate in the same. Their services are well appreciated.

We also express profound gratitude to the members of the committee, comprised of nominees from the Office of the Attorney-General, Law Society of Kenya, Institute of Certified Public Accountants of Kenya (ICPAK), Ministry of Lands, Housing and Urban Planning, Registrar of Societies and the Non-Governmental Organizations Coordination Board (NGO Coordination Board). It is through their enthusiasm, hard work and commitment that we credit the accomplishment of this project.

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## LIST OF ABBREVIATION

|              |   |
|--------------|---|
| <b>CBO</b>   | Community Based Organization                      |
| <b>CIC</b>   | Commission for Implementation of the Constitution |
| <b>CLG</b>   | Company Limited by Guarantee                      |
| <b>ICPAK</b> | Institute of Certified Public Accountants Kenya   |
| <b>KLRC</b>  | Kenya Law Reform Commission                       |
| <b>LSK</b>   | Law Society of Kenya                              |
| <b>NGO</b>   | Non-Governmental Organization                     |
| <b>PBO</b>   | Public Benefits Organization                      |



# CHAPTER ONE

## 1 INTRODUCTION

### 1.1 Mandate of the Commission

The Kenya Law Reform Commission, established by the Kenya Law Reform Commission Act, (No. 19 of 2013) is a body corporate with perpetual succession, which serves both National and County Governments in all matters pertaining to the reform of law and its development generally.

Briefly speaking, the mandate of the Commission is to, *inter alia* undertake review of all the laws of Kenya, assisting County Governments to develop their legislation and working with the Attorney-General and the Commission for the Implementation of the Constitution (CIC) to develop legislation and administrative measures required to implement the Constitution. This mandate emanates from clause 6 (4) of the Sixth Schedule of the Constitution, section 5 of the County Governments Act and section 6(1) of the Kenya Law Reform Commission Act No.19 of 2013.

### 1.2 Background

The Societies Act, Cap 108 (Laws of Kenya) originated from India and was among the various statutes adopted on independence in 1963. The Act came to effect in 1968 and was soon to undergo its first amendment in 1970. Throughout its existence over the decades, the Act was implemented without the necessary policy to guide its implementation. This statute was enacted to make provision for the registration and regulation of societies mainly, private members' clubs, religious organizations, welfare associations, professional associations, sports organizations, political parties and charitable institutions, all of which were contemplated by the law to be not-for-profit making purposes. Due to the proliferation of these societies, it was realized that the Act alone was insufficient to reign in on the entire sector as gaps in the law were emerging putting serious constraints in the administration of the sector generally. However, the Act governed this broad sector until 1990 when the government considered it necessary to start enacting sector specific legislation. Consequently in 1990, the NGO Coordination Act was enacted to regulate the NGO sector, as the first major step to bring efficiency in the administration of the sector. Eventually, the Political Parties Act No. 11 of 2011 was also enacted to regulate political parties and came into force on 1<sup>st</sup> November, 2011. The Sports Act No 25 of 2013 was yet another statute to be enacted to govern sports organizations, in the same token.

In 2013, an initiative was launched to review the Non-Governmental Organizations (NGO) Coordination Act, resulting in the enactment of the Public Benefit Organizations Act, No.18 of 2013



which sought to regulate non-profit making organizations (NPOs), including NGOs registered under the Non-Governmental Organizations Co-ordination Act ("NGO Act"). The PBO Act repealed the NGO Act.

Non-profit Organizations in Kenya may assume one of the following organizational forms:

1. **Public Benefit Organizations (PBOs)** which are registered by the Public Benefit Organizations Regulatory Authority and governed by the PBO Act No 18 of 2013. The PBO Act, under section 2, defines "Public Benefit Organization" as a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is:
  - (a) Organized and operated locally, nationally or internationally;
  - (b) Engages in defined public benefit activities; and
  - (c) Registered by the Authority.
2. **Companies limited by guarantee** and not having share capital are registered by the Registrar of Companies under the Companies Act, 2015. These are companies registered for non-profit purposes.
3. **Trusts** are established under the Trustee Act, Cap 167 Laws of Kenya and the Trustee (Perpetual Succession) Act, Cap 164 Laws of Kenya by families, groups or individuals to hold and manage assets for the benefit of others. Trusts may be incorporated for the following purposes: religious, educational, literary, scientific, social, athletic, or charitable purposes.
4. **Societies are registered** under the Societies Act, Cap 108. The Act defines a society as any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya excluding profit making bodies of trade unions, cooperatives, corporations, and certain other entities. Societies are registered and regulated by the Registrar of Societies.
5. **Cooperative societies and unions.** These are registered at the Department of Cooperatives under the Cooperative Societies Act (No. 12 of 1997), (Amended in 2004). They are voluntary membership organizations and advance the welfare, economic interests and goals of their members. They include consumer, producer and marketing cooperative societies in rural and urban areas and housing development societies found in major urban areas.
6. **Grassroots organizations.** These include *harambee* or self-help groups and community-based organizations (CBOs). Self-help groups and CBOs are formally recognized through registration under the Department of Social Services in the Ministry of Labour, Social Services and Security.

## 1.3 Establishment and Composition of the Committee

On 20<sup>th</sup> February 2014, the Hon. Attorney-General, through a letter referenced AG/CONF/4/55VOL. IV requested the Kenya Law Reform Commission to constitute a committee comprising of key stakeholders to review the Societies Act Cap 108 and other statutes relating to charities.



## 1.4 Terms of Reference

### 1.4.1 Objective

The Committee was required to undertake a comprehensive analysis and review of the Societies Act Cap 108 and make recommendations on other legislation related to charities including review of the Societies Act. In so doing, it was required to work with relevant stakeholders in the development of a proposed Bill and report.

### 1.4.2 Responsibilities

The Committee was to:

- (a) review the existing legal framework;
- (b) undertake literature review for background information on identified regional and international best practices;
- (c) undertake a status analysis of the current legal and administrative framework affecting societies and charities in the Republic;
- (d) collect and collate relevant information for the preparation of the draft legislation;
- (e) carry out study missions to identified regional and international societies, charities and associations so as to inform the draft legislation;
- (f) develop a proposed Bill and a report;
- (g) hold stakeholder workshops with all relevant stakeholders to discuss the proposed Bill; and submit the final proposed Bill to the Attorney-General.

### 1.4.3 Deliverables

- (a) a proposed Bill; and
- (b) a report of the Committee.

## 1.5 Work Methodology

The operations of the committee were based at the Kenya Law Reform Commission's office. The committee conducted desk research and comparative study from different jurisdictions including Australia, United Kingdom, Canada and South Africa. The committee also carried out consultations and sought stakeholder participation. The committee looked at the following materials:

- The draft Compliance Rules on Religious Societies, 2015;
- Sessional Paper No.1 of 2006 on Non-Governmental Organizations;
- The Societies Act, Cap 108;
- Public Benefits Organizations Act No.18 of 2013;
- Companies Act Cap 486 Act No.54 of 2015;
- Trustees (Perpetual) Succession Act Cap 164;



- Cooperative Societies Act, 2004; and
- Non-Governmental Organizations Coordination Act of 1990.

## 1.6 Challenges

1. Financial constraints - The project was not adequately funded, hence the Committee was unable to undertake international benchmarking and to facilitate national stakeholder consultative meetings.
2. The Committee was unable to trace any policy to provide appropriate guidance on the legislative process.
3. The reference to develop a Bill to regulate societies and related charities legislations and the on-going amendments to the Public Benefit Organizations Act No.18 of 2013, has the potential to present a conflict of laws governing the registration and regulation of not-for-profit entities.
4. The sector is so diverse that it is virtually impossible to achieve convergence of thoughts.

# CHAPTER TWO

## 2.0 CURRENT STATUS OF SOCIETIES AND OTHER LEGISLATION RELATED TO CHARITY

Societies are administered under the Societies Act Cap 108. The Act was enacted to make provisions for the registration and regulation of societies. The Act defines a society as any club, company, partnership or other association of ten (10) or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya excluding profit making bodies of trade unions, cooperatives, corporations, and certain other entities. Societies are registered and regulated by the Registrar of Societies.

Prior to enactment of the Act, many associations were formed and existed but they were not legally recognized. This culminated into the adoption of legislation of a general character which would in effect make it possible for various unincorporated associations to gain recognition as legal entities by some process of registration or formalisation. The registration allowed such bodies to obtain legal status and removed uncertainties of non-registration. The whole purpose of the Act was to allow small associations that wanted to be registered and recognized to do so inexpensively.

Over the last four decades, the purpose and number of societies has increased significantly. The current number stands at over 72,000 registered and exempted societies.

Associations not covered under the Act include those administered by the Ministry of Social Services, charities administered under the non-governmental organizations and companies limited by guarantee administered by the Registrar of Companies.

### 2.1 Issues Identified in the Sector

The sector is facing various challenges which have hampered service delivery. The various challenges include:

#### (i) Manual registry

All statutory documents received at the society's registry are usually hard copies and are in return stored in paper files and filing cabinets at the registry. The registry has over 71,000 registered and exempted societies together with the new applications for registration and exemption for registration. This in turn translates to lack of storage space, dusty environment and lack of modern cataloguing system. Another problem is the double registration of the same society and registration of two different societies with similar names due to lack of a database.

#### (ii) Multilateral registration

The committee noted that there is a problem of multilateral registration of not-for-profit organizations. This has been experienced where a single body registers under more than one



registration regime for the same purpose. The problem is that it cannot effectively regulate and provide opportunity for the perpetration of unlawful activities.

### **(iii) Lack of stringent penalties**

The committee noted that the penalties are not sufficient enough and not in tandem with the current economic reality to deter further violation of the legal requirements under the Act and promote strict compliance with the law.

### **(iv) Dispute resolution**

The constitutive document of most organizations in the sector do not provide adequate dispute resolution mechanisms and this leaves the responsibility of resolving disputes to the registrar.

### **(v) Membership**

The committee also noted that registered societies are expected to keep an updated register of their members all the time. It is not a statutory requirement for the bodies to submit a copy to the registrar. Committee noted that disputes are aggravated because of uncertainty on the membership.

### **(vi) Identification of officials**

The law does not require the applicants seeking registration or exemption from registration to provide their identification documents with their application. The prevailing circumstances require that strict measures be put in place to curb fraudulent and illegal activities by officials of societies.

### **(vii) Self-regulation**

The committee holds that bodies should be encouraged to develop their own internal self-regulation mechanisms as a first step towards dispute resolution.

### **(viii) Ownership of property**

Some of the bodies registered in the sector are not legal entities therefore cannot own property in their own name. This is a challenge because most of those bodies own property but they depend on the goodwill of appointed trustees rather than any law to protect the property.

### **(ix) Differential registration processes**

The committee found that some of the bodies are subjected to a different regulatory process due to exemptions granted to some bodies.

## **2.2 Conclusion**

A careful consideration of the foregoing factors led the committee to arrive at the conclusion that Societies Act, Cap 108 has indeed suffered a myriad problems and that a total overhaul of the same was the only plausible way out of that legislative quagmire.

Accordingly, the committee embarked on the task of developing a brand new law which is aimed at proposing appropriate legislative remedies to the Act and by so doing bring sanity to the registration and regulation of societies and charitable institutions.



# CHAPTER THREE

## 3 COMPARATIVE ANALYSIS

### 3.1 Overview

In developing the proposed Bill, the taskforce looked at best practices in other jurisdictions particularly those in the Commonwealth for instance, Australia, the United Kingdom, Canada and South Africa.

### 3.2 Australia

Australia has a common law system. There are three levels of government – federal, state (including several territories) and local authority. The federal governments, states and territories all have legislation enabling the creation of non-governmental, not-for-profit organizations.

The most common not-for-profit organizational forms are: incorporated associations, charitable trusts and company limited by guarantee.

Other not-for-profit legal forms, which are outside the focus of this note due to their limited interaction with foreign grant makers, include religious organizations, political parties, political movements and trade unions.

In Australia, an unincorporated non-profit association may become registered /incorporated under the Associations Incorporation Reform Act 2012.

Once incorporated, the Association is authorised by law to run its affairs as though it were an individual person. That means that the members are not personally liable for the society's debts, contracts or other obligations. The name must end with the word 'incorporated'.

The name of the society cannot be the same or deceptively similar to that of any other incorporated society or other body corporate.

Objects can be specific or more general but one must ensure that all possible current and future activities of the society will be covered by the objects clause. The purpose of the society must be lawful and non-profit oriented.

Once an association becomes incorporated, it acquires a new legal status; it becomes a legal entity in its own right, separate from the individual members.

In Australia for the purposes of financial statements for a financial year, incorporated associations are classified in three classes: tier one, tier two and tier three.



## 3.3 South Africa

The legal framework for not-for-profit, non-governmental organizations in South Africa consists of four primary tiers.

The first tier (*establishment*) allows for the establishment under statutory and common law of the following three forms of not-for-profit organizations:

- (i) Voluntary associations, established under common law;
- (ii) Non-profit trusts, established under statutory law; and
- (iii) Non-profit companies incorporated for a public benefit objective or an objective relating to one or more cultural or social activities, or common or group interests, established under statutory law.

The second tier of legislation (*voluntary registration*) allows any of these organizational forms to apply for the status of a registered non-profit organization. Among other requirements, a Registered Non-Profit Organization cannot distribute profits and it must meet certain governance criteria.

The third legislative tier (*partial tax exemption*) enables a non-profit organization to apply for the status of Public Benefit Organization. Among other requirements, the organization's sole purpose must be to undertake one or more public benefit activities carried out in a not-for-profit manner and with an altruistic or philanthropic intent. Public Benefits Organizations are restricted from using resources to directly or indirectly support, advance or oppose any political party, but they are not restricted from lobbying.

They are entitled to broad range of fiscal benefits, including; a partial income tax exemption, an exemption on donations tax and for some exemption on transfer duty on immovable property.

Finally, the fourth legislative tier (*donor deductibility status*) allows Public Benefit Organizations to apply for the right to receive tax deductible donations. Other not-for-profit legal forms, which are outside this scope due to their limited interaction.

### 3.3.1 Relevant legal forms in South Africa

#### Voluntary associations

The voluntary association is the most common legal form for not-for-profit organizations in South Africa. No office of registry exists for voluntary associations. Forming a voluntary association requires only three or more people agree to achieve a common objective that is primarily not-for-profit. The agreement may be oral or written, although it is customary for the agreement to take the form of written constitution. Voluntary associations are a product of statute. This can be confusing because the common law is not easily accessible and sometimes is conflicting. Voluntary association may be classified as corporate bodies under the common law known as "*universitas*" and bodies that remain unincorporated at common law, known as "non-corporate association".

When deciding how to classify a voluntary association, a court will consider the organization's constitution as well as its nature of objectives and activities. An organization generally must meet three requirements in order to be classified as a "*universitas*":

- (a) It must be structured to continue as an entity notwithstanding a change in membership;
- (b) It must not be able to hold property distinct from its members; and
- (c) No member can have any rights, based on membership, to the property of the association.

If all these requirements are met, the organization will be deemed a *universitas* with legal personality.

### 3.4 England and Wales

In reference to the United Kingdom, this report is limited to England and Wales. Scotland and Northern Ireland, the other two components of the United Kingdom have separate legal systems. However, their legal structures and taxation rules are similar to those of England and Wales. In the past their provisions for regulating charities have differed significantly, but Scotland and Northern Ireland both now have similar regulatory regimes.

England and Wales is a common law federal jurisdiction with four primary forms of not-for-profit organizations:

- (a) Companies limited by guarantee;
- (b) Unincorporated associations;
- (c) Trusts;
- (d) Industrial and provident societies; and
- (e) Charitable incorporated organizations.

A non-profit organization in any of these categories can qualify as a charity. A charity is eligible for significant tax benefits and as discussed below, is subject to a series of regulations relevant to an equivalency determination. A new incorporated legal structure, available solely for charities, the charitable incorporated organization was to be introduced in 2012.

Registered charities are exempt from income tax on grants, donations, and similar sources of income. Certain commercial activities carried out by a charity are tax exempt below certain threshold. Membership subscriptions are exempt provided that they are essentially donations and not fees for benefits, which may be subject to tax. Donations of cash by corporations and natural persons to charities qualify for tax relief under the so-called "Gift Aid" scheme. Donation of share land and buildings also qualify for tax relief.

The Charity Commission for England and Wales registers and regulates charities. Its website contains policy guidelines and publications, summaries of the common law, and the register of charities.

Under the Charities Act, 2011, a charity is defined as a body corporate or trust which is for a charitable purpose that provides benefit to the public. The new list of charitable purposes has twelve (12) specific headings and one general heading.

## 3.5 Canada

In Canada, there are no statutory requirements under either federal or provincial law governing the legal form under which a not-for-profit entity must be organized. The most common legal forms are:

- (a) Non-share (membership) corporations, incorporated under either federal or provincial law. Federal corporate legislation is most commonly used where the organization is operating in more than one province or internationally. Provincial legislation is used most often when the organization is operating within a single province or territory;
- (b) Trusts which are recognized in common law provinces. (Quebec, which is a civil law jurisdiction, also recognizes forms similar to trusts);
- (c) Unincorporated organizations or associations.

With the exception of federal incorporation, the creation of any organization is a function of the applicable provincial law which varies somewhat, but seldom substantially from province to province.

The primary definition of a non-profit organization is "a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned to section 149 (1) (1) of the Income Tax Act and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income which was payable to, or was otherwise available for the personal benefit of any proprietor, member or shareholder thereof".

The term club, society or association includes corporations and trust. The key test is that the pursuit of profit cannot be a purpose. But this does not mean that the activities generating a profit are forbidden, so long as the motive for the activity is not the generation of the profit. Also, because the Income Tax Act does not require registration of not-for-profit organizations; in essence they self-assess their status.

The not-for-profit organizations do not need to serve the public benefit. Indeed, most of the major ones in Canada are organized for the benefit of their members. Such organizations include professional bodies such as the Canadian Bar Association, sporting and social clubs, labour unions and political parties. However since not-for profit organizations may not be organized for social welfare purposes, it is possible that it may seek funds from a U.S donor.

# CHAPTER FOUR

## 4.0 DEVELOPMENT OF ASSOCIATIONS (REGISTRATION AND INCORPORATION) PROPOSED BILL, 2015

### 4.1 Overview

Having looked at the status of the societies and charitable organizations in Kenya and the challenges faced by the sector, the committee sought to establish the Associations (Registration and Incorporation) Bill, to overcome the challenges which have been identified. Work on the Bill commenced on 8<sup>th</sup> April 2014 when the Kenya Law Reform Commission constituted a technical team to spearhead the development of the Bill.

Under the Constitution, public participation and stakeholders consultations are obligatory. The process of developing the Bill has therefore involved extensive stakeholder consultation. To facilitate development of the Bill, the Commission established a committee headed by Commissioner Njoki Kahiga to spearhead the process.

The stages in the development process are described briefly below:

### 4.2 Meeting of 8<sup>th</sup> April 2014

At its first meeting, the committee determined:

1. Establish a national regulatory framework for not-for-profit entities that reflect the unique structures, funding arrangements and goals of such entities;
2. Establish an authority-
  - (a) Responsible for the registrations of not-for-profit entities according to their types and subtypes;
  - (b) To administer the national regulatory framework; and
  - (c) Assist registered entities in complying with and understanding the legislation, by providing them with the guidance and education.
3. Provide for registration as a prerequisite for an entity to access tax concessions, exemptions, or benefits.

The meeting also discussed the proposed terms of reference and work methodology.

### 4.3 Meeting of 29<sup>th</sup> May 2014

The committee met and discussed the terms of reference, the work plan and the budget. A paper on comparative study of best practices with regard to registration of NGOs/PBOs was also presented. This included jurisdictions such as Tanzania, Cameroon, Canada, South Africa, England and Wales and Australia.

### 4.4 Meetings of 25<sup>th</sup> August, 26<sup>th</sup> September and 23<sup>rd</sup> October 2014

Presentations were made on the Societies Act Cap 108, Companies Bill, 2014, the Non-Governmental Organizations Coordination Act of 1990, the Public Benefits Organizations Act and Trustees (Perpetual Succession) Act Cap 164. The presentations were made by Sussane Lutta, Lyndon Otieno and Mathew Kimanzi respectively.

The presentation highlighted the status of policy, regulation and practice governing the sector.

### 4.5 Retreat of 17<sup>th</sup> to 21<sup>st</sup> November 2014

The committee held a retreat at the Mombasa Continental Resort Hotel in Mombasa to isolate issues from the Societies Act Cap.108, Public Benefits Organizations Act No. 18 of 2013 and the Trustees Perpetual Succession Act Cap 164 which required more substantial consideration. After the deliberations members made the following recommendations:

1. In the Public Benefits Organizations Act No.18 of 2013, the definition of a PBO includes Community Based Organizations under section 5 (2) (i). However, they are regulated by the department of social services under the Ministry of Labour, Social Security and Services. Members were of the view that they should be anchored somewhere or their operational guidelines be revisited in order to sort out some of the following anomalies:
  - (a) Being CBOs their scope of operation is limited and it is difficult to monitor their activities;
  - (b) Legal framework for their operations has not been clearly developed;
  - (c) Some operate as charities but are not registered;
  - (d) They have no mechanism for dispute resolution.
2. There is need of clarity on the jurisdiction of the Tribunal in light of sections 52 and 54 of the Public Benefits Organizations Act No.18 of 2013. There is need to clarify whether the Tribunal enjoys jurisdiction of a lower court or of a superior court.
3. Members were of the view that there is need for societies to be categorized/classified due to numerous and rigorous processes involved in the regulation of societies from registration to compliance with certain legal requirements.

While classifying the societies, the following factors may be considered as key benchmarks:

- (a) Monetary value/capacity
- (b) Membership –

- (i) number of members
- (ii) local or foreign
- (c) Objectives of the society
- (d) Geographical location

Societies need to be classified for the following reasons:

- (a) Risk management of societies
- (b) Equity – to protect the small societies and get them exempted from certain provisions
- (c) Effective and efficiently monitoring of the societies
- (d) To facilitate compliance of societies with legal requirements

It was proposed that societies be classified as either small or large.

Members recommended a thorough review of the Trustees (Perpetual Succession) Act (Cap 164) with a view to aligning it with the Constitution and generally modernize it in terms of form and content. It was further proposed that a policy be formulated to guide the implementation of the Act.

It was proposed that the registration of Trusts, Societies and PBOs be placed under one department for efficient monitoring system and vetting.

It was recommended that the Trustee (Perpetual Succession) Act and the Societies Act be merged to form one legislation.

#### **4.6 Meeting of 19<sup>th</sup> February 2015**

The committee held a meeting at the KLRC boardroom. The agenda of the meeting was to comment on the report of the Mombasa retreat and the AG's circular on churches and its implication on the report. The members agreed to review the Societies Act and related charities statutes with an aim of harmonising the charities sub-sector and introducing a well-coordinated regime of regulation of societies and charitable institutions. A copy of the report is hereby attached.

#### **4.7 Meeting of 31<sup>st</sup> March 2015 to 3<sup>rd</sup> April 2015, Technical Drafting Retreat at Kenyatta University**

The secretariat held a retreat to develop a zero proposed Bill based on the recommendations of the committee and international best practices.

#### **4.8 Meeting of 12<sup>th</sup> June and 20<sup>th</sup> August 2015**

The committee held a meeting at the KLRC boardroom to comment on the proposed Bill. The members went through the Bill clause by clause and gave the proposals which were to be incorporated by the secretariat.

## 4.9 Consultations

The chairperson of the Kenya Law Reform Commission consulted the Victorian Law Reform Commission of Australia on how the country deals with the regulation of societies. He found out that there is a detailed legal regime covering incorporation of trusts and other forms of corporations. The Australian Commission provided a link to the relevant legislation.

## 4.10 Public Participation/Stakeholders meeting 17<sup>th</sup>-18<sup>th</sup> November, 2015

There was a stakeholders' retreat which was held in Naivasha at Simba Lodge where different stakeholders gave their views on the proposed Bill. These are some of the proposals:

- (a) Religious organizations to have their own law/Act to regulate their activities;
- (b) The need for a law that sets minimum standards for religious organs and which kind of institutions should be registered as religious institutions;
- (c) A registration certificate be provided for in the Act with a seal and emblem.

These views were considered by the committee at the meeting held on 19<sup>th</sup> and 20<sup>th</sup> November 2015 at the same venue.



*Kenya Law Reform Commission Workshop on the Societies Act and Related Charities Legislation, held at Lake Naivasha Simba Lodge on 17<sup>th</sup>-18<sup>th</sup> November 2015*

# CHAPTER FIVE

## 5.0 RECOMMENDATIONS AND CONCLUSION

### 5.1 Recommendations

- (1) Development of a policy framework for associations;
- (2) Review of the Trustees (Perpetual Succession) Act, Cap 164;
- (3) Conduct of international benchmarking of other jurisdictions;
- (4) There is need to determine the scope of application of this Associations (Registration and Incorporations) Bill and whether it will govern the registration and regulation of Public Benefit Organizations.

### 5.2 Conclusion

Ultimately, the committee took the view that the review of the Societies Act, Cap 108 and related charities statutes was timely and will achieve a greater good and this initiative will culminate in enhancing the efficiency and effectiveness within the sector.



# ANNEX 1

## ASSOCIATIONS (REGISTRATION AND INCORPORATION) PROPOSED BILL, 2015

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- 5- Functions of Registrar
- 6- Powers of Registrar under this Act
- 7- Deputy Registrar and Assistant Registrars

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## SCHEDULE - MATTERS TO BE PROVIDED IN THE RULES OR CONSTITUTION OF EVERY ASSOCIATION

### ASSOCIATIONS (REGISTRATION AND INCORPORATION) BILL, 2015

#### A Bill for

AN ACT of Parliament to make provision for the registration and incorporation of associations, the governance, financial accountability and matters relating to the rules and membership of associations registered under this Act and for connected purposes-

ENACTED by Parliament of Kenya as follows-

#### PART I — PRELIMINARY

- Short Title                    1. This Act may be cited as the Associations Act, 2015.
- Interpretation                2. In this Act—
- “**association**” includes an organization, any club, religious institution, company, partnership, trust or other body established in Kenya, or having its headquarters, chief place of business, or branch in Kenya; formed for any charitable purpose, having at least five (5) members and whose profits are not distributable to its members, registered or incorporated under this Act, but does not, include—
- (a) any corporation incorporated by or under any other written law;
  - (b) a registered trade union within the meaning of the Trade Unions Act (Cap. 233), including a branch of a trade union registered under that Act, a probationary trade union within the meaning of that Act and a trade union or a branch of a trade union whose application for registration has been made and not determined;
  - (c) a co-operative society registered as such under any written law;
  - (d) any international organization of which Kenya is a member, or any branch, section or organ of any such organization;
  - (e) any combination or association which the Cabinet Secretary may, by order, declare not to be a society for the purposes of this Act;
- “**body**” means a club, institution or other body formed or carried on for any lawful purpose that has no fewer than five members seeking to be registered as an association under section 13;
- “**books of accounts**” include digital accounting records;
- “**Cabinet Secretary**” means the cabinet secretary responsible for matters relating to associations;
- “**Commission**” means the Judicial Service Commission established by Article 171 of the Constitution;

“**Department**” means the department responsible for registration and incorporation of associations;

“**incorporated association**” means an association registered as an incorporated association in accordance with section 17;

“**registered association**” means a body registered as a registered association in accordance with section 13;

“**Registrar**” means the Registrar appointed under section 4;

“**qualified privilege**” means a type of defence taken in defamation actions and otherwise defamatory statement gets qualified privilege protection when the communication statement is—

- (1) made in good faith;
- (2) on a subject matter in which the person making it has an interest or in reference to which he or she has a duty;
- (3) made to a person or persons having a corresponding interest or duty even though it contains matters which without this privilege would be slanderous; and
- (4) made without malice.

Object and purpose

2. The object and purpose of this Act is—
  - (a) to provide a framework for the registration and incorporation of associations;
  - (b) to establish a scheme for the registration of voluntary associations and other registerable bodies and incorporation of associations; and
  - (c) to make provision for the corporate governance, financial accountability and other matters relating to the rules and membership of associations registered under this Act.

#### *Administration of the Act*

Appointment and qualifications of Registrar

4. (1) The Cabinet Secretary shall, through an open competitive process, appoint a suitably qualified person to be the Registrar of Associations, (in this Act referred to as ‘Registrar’).
- (2) A person is qualified for appointment as the Registrar if the person—
  - (a) is qualified as an advocate of the High Court of Kenya;
  - (b) has at least ten (10) years proven experience in matters relating to business registration;
  - (c) meets the requirements of Chapter Six of the Constitution.

## Functions of Registrar

5. (1) The Registrar is the accounting officer of the Department and is responsible for the —
- (a) implementation of the decisions of the Cabinet Secretary;
  - (b) formulation and development of policies on associations;
  - (c) day-to-day administration and management of the affairs of the Department; and
  - (d) performance of such other duties as may be assigned under this Act or other written law.
- (2) It is the responsibility of the Registrar to—
- (a) register associations;
  - (b) incorporate associations;
  - (c) keep and maintain, in the prescribed form, a register of—
    - (i) incorporated associations;
    - (ii) registered associations; and
    - (iii) associations whose registrations have been suspended or cancelled.

## Powers of the Registrar

6. The Registrar shall have power in accordance with the provisions of this Act to—
- (a) conduct investigations and issue summons;
  - (b) suspend and cancel the registration of an association;
  - (c) initiate the winding up of an association;
  - (d) facilitate alternative dispute resolution when necessary to do so;
  - (e) prescribe and receive fees; and
  - (f) proscribe an association as unlawful.

## Deputy Registrar and Assistant Registrars

7. (1) The Cabinet Secretary shall appoint a Deputy Registrar and such Assistant Registrars as are necessary for the effective implementation of this Act.
- (2) The Registrar may in writing delegate to the Deputy Registrar and every Assistant Registrar such powers or duties as may be specified in the instrument of delegation who for such purposes, shall have all the powers, privileges and authority of the Registrar under this Act.

## PART II — REGISTRATION AND CANCELLATION OF REGISTRATION

### *Lawful and Unlawful Associations*

Associations  
established in  
Kenya

8. (1) For the purposes of this Act, an association is established in Kenya, although it may be organized and have its headquarters or chief place of business outside Kenya, if any of its officers or members reside in Kenya or is present in Kenya, or if any person in Kenya manages or assists in the management of the association or solicits or collects money or subscriptions on its behalf, except during such time as—
- (a) it is organized and is operating wholly outside Kenya;
  - (b) no office, place of business or place of meeting is maintained or used in Kenya by it or by any person on its behalf;
  - (c) no register of all or any of its members is kept in Kenya; and
  - (d) no subscription is collected or solicited in Kenya by it or by any person on its behalf.
- (2) A foreign association may be registered on making an application as provided in the Regulations.
- (3) An international association registered outside Kenya may on application, as provided under the Regulations, have the Kenyan chapter of the association registered.

Unlawful  
associations

9. (1) An association shall be declared an unlawful association if it—
- (a) is not a registered association under this Act;
  - (b) is engaged in immoral or illegal activities; or
  - (c) carries out any international crime.
- (2) Despite subsection (1) an association shall not be an unlawful association where, within twenty-eight (28) days of its formation, it has applied for registration under section 13 of this Act and it has not been notified of the determination of its application, unless—
- (a) it is formed for an unlawful purpose; or
  - (b) the Registrar has declared it, by order, to be an association dangerous to the good government of the Republic; or
  - (c) the Registrar has notified the association, whether or not before the making of the application, that the Registrar intends to refuse registration on one of the grounds specified in section 18 of this Act.
- (3) The Registrar shall consider every application for registration of an association and shall communicate the decision to the applicant within ninety (90) days of receipt of the application.

- (4) If a determination is not made within the period specified under this section, the Registrar shall inform the applicant giving the reasons in writing.
- (5) Where an association which is not a registered association has applied for registration and is saved by the proviso to subsection (1) of this section from becoming an unlawful association, no person shall, except with the written permission of the Registrar, collect or invite subscriptions or donations to the funds of the association or in any other way whatever organise or take part in any activity of or on behalf of the association, except only to apply to or correspond with the Registrar.
- (6) Any person who contravenes subsection (3) of this section commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Managing unlawful association an offence

10. Any person who manages or assists in the management of an unlawful association shall be committing an offence and on conviction shall be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

Being member of unlawful association

11. Any person who, knowing or having reasonable cause to believe an association to be an unlawful association—
  - (a) is a member, or attends any meeting, of that association; or
  - (b) allows a meeting of that association, or of any members of that association, to be held in any house, building or place belonging to or occupied by that person, or over which that person has control,
 commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred thousand shillings, or to both such imprisonment and such fine.

Prohibition of specified acts by or on behalf of certain associations

12. (1) The Registrar may, where it appears to the Registrar to be in the public interest, in relation to an association which has been refused registration under section 14, or has had its registration cancelled under section 57, or is an association of one of the kinds mentioned in paragraphs (i), (ii) and (iii) of the proviso to section 9, by order, prohibit any act specified therein—
  - (a) by any person on behalf of or in relation to any association associated with such association; or

- (b) by any person on behalf of or in relation to any association which in the opinion of the Registrar has objects similar to the objects of such association, in Kenya or in any particular area of Kenya (being the area in which it appears to the Registrar that such association carried on or, as the case may be, proposed to carry on its activities) or in any part of such area.
- (2) An order under subsection (1) shall continue in force for such period, not exceeding six (6) months, as may be specified in such order.
- (3) Subsection (2) shall not preclude the Registrar from making a further order or orders, with or without variations, where it appears to the Registrar to be in the public interest so to do.
- (4) Any person who contravenes an order made under subsection (1) commits an offence and on conviction shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.
- (5) For the purposes of this section, an association shall be deemed to be associated with an association which has been refused registration or has had its registration cancelled if the former association is the parent association of which the latter association is a branch or is derived from the same parent association or is the successor of such parent association.

## REGISTRATION

### *A – Registered Associations*

Application and registration as registered association

- 13.** (1) A body which intends to be registered as an association under this Act shall within twenty-eight (28) days after its formation, make an application in the prescribed form, to the Registrar for registration under this Act.
- (2) An application made under subsection (1) shall be accompanied by—
- (a) the proposed name of the body to be registered;
  - (b) the postal and physical address, telephone number and e-mail, if any, of the body to be registered;
  - (c) the names and addresses of the officials;
  - (d) the purpose of the body;
  - (e) a copy of the rules of the body;
  - (f) application fee;
  - (g) any other prescribed information.
- (3) Upon application being made under subsection (1), the Registrar shall, subject to this Act, register the body applying for registration by entering in the Register of Associations the prescribed particulars and the date of the entry.

- (4) The Registrar shall issue to an association registered under this section, a certificate of registration in the prescribed form and such certificate shall be deemed to be proof of the registration of the association.
- (5) An association registered under this section shall display its certificate of registration in a prominent place within its registered office.
- (6) The persons whose names are submitted as members of a body on its application for registration, shall from the date of registration be entered as members of the registered association.

Refusal of  
registration

- 14. (1)** The Registrar may refuse to register a body as a registered association where—
- (a) the Registrar is satisfied that such association is a branch of, or is affiliated to or connected with, any organization or association of a political nature; or
  - (b) any of the proposed officers has been at any time, an officer of an association which has been refused registration or which has had its registration cancelled under section 57 of this Act.
- (2)** The Registrar shall refuse to register a body as a registered association where—
- (a) the Registrar has reasonable cause to believe that the body has among its objects, or is likely to pursue or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Kenya, or that the interests of peace, welfare of good order in Kenya would otherwise be likely to suffer prejudice by reason of the registration of the body, or
  - (b) the Registrar has, under paragraph (ii) of section 9 of this Act, declared it to be a body dangerous to the good government of the Republic; or
  - (c) the terms of the constitution or the rules of the body are in any respect repugnant to or inconsistent with any law; or
  - (d) the Registrar is satisfied that-
    - (i) the application does not comply with this Act or its Regulations; or
    - (ii) the body does not exist; or
    - (iii) the name under which the body is to be registered—
      - (a) is identical to that of any other association which either is existing or has existed, or of any body whose application for registration has been refused under this section; or
      - (b) so nearly resembles the name of any other association as, to be likely to deceive the public or the members of either association as to its nature or identity; or

- (c) is, repugnant to or inconsistent with any law or is otherwise undesirable.
  - (d) the body is established for the purpose of securing pecuniary profit for its members.
- (3) The Registrar shall within twenty-eight (28) days of the refusal to register a body as a registered association under this section, inform the body of such refusal giving reasons thereof, in writing.

Amalgamation  
of registered  
associations

- 15.** (1) A registered association may amalgamate with another registered association following a special resolution of each association and the emergent association shall apply for registration in accordance with section 13.
- (2) The Registrar shall make rules on the amalgamation of registered associations.

### *B – Incorporated Associations*

Application for  
incorporation

- 16.** (1) An association registered under section 13 which intends to be registered as an incorporated association shall make an application in the prescribed form to the Registrar, which shall be accompanied by—
- (a) the name of the association to be incorporated;
  - (b) the postal and physical address, telephone number and e-mail, if any, of the association to be incorporated;
  - (c) the names and addresses of the officials;
  - (d) a copy of the certificate of registration;
  - (e) a copy of the rules of the association;
  - (f) a copy of the resolution passed at a meeting calling for incorporation of the association;
  - (g) application fee; and
  - (h) any other prescribed information.
- (2) Despite subsection (1) a body which has not been registered under section 13 and which seeks to be both registered and incorporated under this Act may make application for both registration and incorporation at the same time.

Manner of effecting incorporation

17. (1) Upon application being made in the prescribed manner for incorporation of an association, the Registrar shall, subject to this Act, register the incorporated association by entering in the register of incorporated associations the prescribed particulars and the date of the entry.
- (2) Upon registering an incorporated association, the Registrar shall issue to the incorporated association a certificate of incorporation in the prescribed form.
- (3) A body incorporated under subsection (1) is an incorporated association and —
- (a) has perpetual succession;
  - (b) may have a common seal;
  - (c) may sue and be sued in its corporate name;
  - (d) subject to this Act, may acquire or hold, whether on trust or absolutely, and dispose of real and personal property; and
  - (e) may do all acts and things that a body corporate may by law do.
- (4) Notwithstanding the provisions of this Act or any other written law, any registered association which intends to acquire any property shall through a special resolution apply for incorporation.

Refusal to register association as an incorporated association

18. (1) The Registrar may refuse to register an association as an incorporated association if satisfied that the application does not comply with the requirements for incorporation—
- (i) under this Act; or
  - (ii) under the rules of the association.
- (2) The Registrar shall within twenty-eight (28) days of the refusal to incorporate an association under this section, inform the association of such refusal giving reasons thereof, in writing.

### PART III – ADMINISTRATION OF ASSOCIATIONS

General powers of an association

19. An association may, subject to its rules—
- (a) invest and deal with funds of the association not immediately required in any manner as it thinks fit;
  - (b) raise and borrow money on any terms and in any manner as it thinks fit;
  - (c) secure the repayment of funds raised or borrowed by the association or the payment of a debt or liability of the association by giving mortgages, charges or securities on or over all or any of the property of the association; and
  - (d) do anything that is incidental or conducive to the attainment of the purposes and the exercise of the powers of the association.

Office and  
postal address

- 20.** (1) Every association shall have an office and a postal address, and shall on application for registration, give notice of the physical location of the office and of the postal address to the Registrar in the prescribed form.
- (2) All communication and notices required or authorized to be sent under or for the purposes of this Act or any subsidiary legislation, may be sent by post addressed to the postal address of the association or, on written request of the association, through electronic mail.
- (3) An association shall give notice to the Registrar, in the prescribed form, of any change of the physical location of the office, the postal address or e-mail address, within fourteen (14) days of the change, and the notice shall be signed by three of the officers of the association.
- (4) An association which—
- (a) operates without having a physical or postal address, or without having given notice of the physical address of its office or its postal address as required by subsection (1); or
  - (b) operates at any place to which its office may have been removed without giving notice of the change in the location to the Registrar as required by subsection (3); or
  - (c) fails to give notice of any change of its physical or postal address as required by subsection (3);
- commits an offence.

Rules and  
constitution of  
associations

- 21.** (1) Every registered association or incorporated association shall develop rules or a constitution and submit it to the Registrar together with its application for registration unless the application is accompanied by a statement that the model rules under section 22 have been adopted as the rules of the proposed association.
- (2) The rules or constitution of an association shall specify matters set out in the Schedule.
- (3) An association that adopts the model rules under section 22 without modification, as its rules is taken to have met the requirements of subsection (1).
- (4) The rules or constitution of an association are the rules referred to in subsection (1), as amended from time to time, in accordance with this Part.
- (5) If the rules or constitution of an association do not make provision for pre-registration contracts, the model rules, to the extent that they make provision for that matter, are taken to be included in the rules of the association.
- (6) A member of a registered association may request the Registrar for an order requiring an association to enforce its rules.
- (7) A rule or purpose of an association that is inconsistent with this Act or contrary to law is of no effect.

## Model rules

- 22.** (1) The Registrar shall prescribe model rules for registered associations and incorporated associations under the Regulations.
- (2) The model rules so prescribed shall make provision for—
- (a) the name of the association;
  - (b) the purposes of the association;
  - (c) the financial year of the association;
  - (d) election of officials;
  - (e) annual general meeting; and
  - (f) any other matter the Registrar determines necessary.
- (3) An association which approves the adoption of the model rules as its rules, is taken to have adopted any subsequent amendment to the model rules as an amendment of its rules.
- (4) An amendment to the rules of an association referred to in subsection (3) —
- (a) takes effect on the day the relevant amendment to the model rules comes into operation;
  - (b) takes effect without the requirement of a special resolution of the association; and
  - (c) does not require the approval of the Registrar.
- (5) If an association that has approved the adoption of the model rules as its own rules amends those rules under section 23, other than an amendment to its name, purposes or financial year, the association is taken to have adopted its own rules and subsections (3) and (4) shall not apply to those rules.
- (6) An incorporated association may, by special resolution, approve the adoption of the model rules as the rules of the association at any time after its incorporation under this Act.
- (7) An incorporated association that approves the adoption of the model rules as its own rules under subsection (6), shall within fourteen (14) days notify the Registrar, using the prescribed form.

## Amendment of rules or constitution.

- 23.** (1) Subject to this Act, an association may through a resolution passed at an annual general meeting, amend its rules or constitution.
- (2) An amendment to the rules of a registered association or the constitution of an incorporated association shall not take effect unless and until the amendment is approved by the Registrar.

- (3) An application for the approval of an amendment to the rules of a registered association or the constitution of an incorporated association shall be made by the secretary of such association in the approved form—
- (a) within twenty-eight (28) days after the amendment was passed by a special resolution; or
  - (b) if a longer time has been allowed by the Registrar, within the time allowed.
- (4) An application made under subsection (3) shall be accompanied by—
- (a) a declaration signed by at least two officials to the effect that the special resolution was passed in accordance with this Act and the rules of the association or the constitution of the incorporated association; and
  - (b) either-
    - (i) a copy of the notice of the special resolution passed by the association setting out the particulars of the amendment; or
    - (ii) if the association has adopted the model laws prepared by the Registrar, a copy of the minutes at which the association adopted the change in the model laws;
  - (c) a consolidated copy of the rules or constitution that clearly shows the amendment; and
  - (d) the prescribed fee.
- (5) Subject to subsection (6), if an application for the approval of an amendment to the rules or constitution of an association is made in accordance with subsections (3) and (4), the Registrar shall approve the amendment.
- (6) The Registrar shall refuse an amendment to the rules or constitution of an association if the Registrar is satisfied that the amendment is contrary to this Act or its Regulations.
- (7) If the Registrar approves the amendment of the rules or constitution of an association, the Registrar shall give written notice of approval to the association.
- (8) If a special resolution provides for more than one amendment of the rules or the constitution of an association, nothing in this section shall prevent the Registrar from approving one or more and not all of those amendments.

Contents of  
constitution or  
rules

- 24.** (1) The constitution or rules of every association formed after the commencement of this Act shall provide, to the satisfaction of the Registrar, for all the matters specified in the Regulations to this Act and shall not be amended so that it ceases so to provide.
- (2) The Registrar may, by order in writing, require any association which, at the commencement of this Act is registered, to amend its constitution or rules within three (3) months after the date of the order to provide for all or any of the matters specified in the Regulations to this Act, and, notwithstanding its constitution or rules, the association, for the purpose of complying with the order, shall convene a meeting of the same kind as is required by its constitution or rules for amending its constitution or rules, or if the constitution or rules make no provision for such amendment, the association shall convene a general meeting of members for the purpose.
- (3) Where an association contravenes an order given under subsection (2) the association and every officer of the association commits an offence and-
- (a) the association shall on conviction be liable to a fine not exceeding five hundred thousand shillings or suspension for such period as the offence continues; and
- (b) every officer shall on conviction be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.
- (4) Despite subsection (2) an officer shall not be convicted of the offence under this subsection if such officer establishes to the satisfaction of the court that the officer exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond the officer's control.

Association to  
obtain consent  
of Registrar  
before amending  
name,  
constitution, etc.

- 25.** (1) No association shall—
- (a) amend its name, or its constitution or rules; or
- (b) dissolve itself,
- except with the prior consent in writing of the Registrar, obtained upon written application to the Registrar and signed by three of the officers of the association.
- (2) An application by an association to do any of the things specified in subsection (1) of this section shall be accompanied by a copy of the minutes of the meeting at which the resolution to do that thing was passed, certified as a true copy by three of the officers of the association.

- (3) An application made under subsection (1) shall be delivered to the Registrar within fourteen (14) days after the day on which the resolution was passed.
- (4) The Registrar shall respond to an application made under subsection (1) within fourteen (14) days of its receipt.
- (5) An association which contravenes this section commits an offence.

### *Provisions on officers of associations*

Officers of association

- 26.** (1) An association shall ensure office holders of the association are elected in accordance with the provisions of this Act and its constitution or rules.
- (2) "office holder" means any person or their deputy holding any one of the following offices—
- (a) the chairperson;
  - (b) the secretary;
  - (c) the treasurer; and
  - (d) a member of the committee;
- and the term "officer" shall be construed accordingly.

Restriction of appointment of certain officers, etc.

- 27.** (1) A person who has been convicted of a crime involving fraud or dishonesty shall not, for a period of ten (10) years from the time the person completed serving sentence, be eligible to be appointed or elected—
- (a) as an office holder; or
  - (b) to any other office the holder of which is responsible for the collection, disbursement, custody or control of the funds of the association or for its accounts; or
  - (c) as trustee or auditor of an association.
- (2) No person shall be qualified to be appointed or elected auditor of an association if that person is an officer of that association.

Change of officers or title of office

- 28.** (1) An association shall within fourteen (14) days of any change of officers or the title of any office, give notice to the Registrar in the prescribed form.
- (2) A notice under subsection (1) shall be accompanied-
- (a) by the resolution signed by three main officers of the association;
  - (b) signed attendance of members present at the meeting at which such change was adopted; and
  - (c) minutes of the meeting at which the change was adopted.

- (3) An association which fails to give notice as required by subsection (1) of any change of officers or title of any office of the association, shall remit to the Registrar a late filing fee for every month after the period specified under subsection (1).
- (4) The Cabinet Secretary shall make Regulations prescribing the procedure and fines under this section.

Disputes as to officers

- 29.** (1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of an association as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the association, the Registrar may, by order in writing—
- (a) summon the disputing parties for alternate dispute resolution; or
  - (b) refer the matter to the Tribunal or the agreed dispute resolution mechanism; or
  - (c) require the association to produce to the Registrar, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the association or of the institution of proceedings for the settlement of such dispute.
- (2) If an order under subsection (1) of this section is not complied with to the satisfaction of the Registrar within the period of one month or any longer period as the Registrar may allow, the Registrar may cancel the registration of the association.
- (3) An association aggrieved by the cancellation of its registration under subsection (2) may appeal to the Tribunal within thirty (30) days of such cancellation.
- (4) Appeal from a decision or order of the Tribunal shall lie with the High Court.

Officers on dissolution

- 30.** Notwithstanding the dissolution or purported dissolution of an association, the persons who, immediately before the dissolution or purported dissolution, were officers of the association shall be deemed, for purposes of sections 58 and 59 of this Act, to have been and to be such officers.

Indemnity of office holders

- 31.** An association shall indemnify each of its office holders against any liability incurred in good faith by the office holder in the course of performing duties as an office holder.

Purporting to act  
as officer

- 32. (1)** Any person who—
- (a) acts or purports to act as an officer of an association, and who has not been duly appointed or elected as an officer of that association; or
  - (b) having been appointed or elected as an officer of an association, otherwise than at the time of the formation of the association, acts as an officer of that association after the end of the period prescribed by section 61 of this Act for giving notice of such appointment or election to the Registrar, no such notice having been given within such period,
- commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.
- (2) The provisions of this section shall not prevent a person who has been duly appointed or elected as officer of an association from signing the notice prescribed by section 61 of this Act.

#### *Provisions on members*

Register of  
members

- 33. (1)** Every association shall keep a register of its members in such form as the Registrar may specify or as may be prescribed, and shall cause to be entered in the register the name and address of each member, the date of admission to membership and the date on which such person ceases to be a member.
- (2) Where an association contravenes subsection (1) the association and every officer of the association commits an offence and—
- (a) the association shall on conviction be liable to a fine not exceeding one hundred thousand shillings or suspension for such period as the offence continues; and
  - (b) every officer shall on conviction be liable to fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.
- (3) Every registered association shall submit to the Registrar an updated list of its members—
- (i) whenever required by the Registrar; and
  - (ii) annually, within such period as may be specified.

- (4) An association which fails to submit an updated list of members within the specified period will attract a penalty for late filing.
- (5) An association shall enter in the register the date on which a person ceases to be a member of the association within fourteen (14) days from that date.
- (6) Information about a person who is no longer a member of the association, other than the name of the person and the date on which the person ceased to be a member of the association, shall be removed from the register of members before the next annual submission of the list of membership to the Registrar.

Membership of  
an association

- 34. (1)** On the registration of a body under this Act, the members of the association are—
- (a) the persons who were members of the association immediately before its incorporation;
  - (b) the persons who were members of the registrable body immediately before its registration under this Act;
  - (c) in the case of the amalgamation of two or more associations into a single association, the persons who were members of any of the associations so amalgamated immediately before the amalgamation.
- (2) Other persons may be admitted as members of an association in accordance with its rules or constitution.

Limitation  
of rights and  
liabilities of  
members

- 35. (1)** Unless expressly provided by this Act or the rules or constitution of an association, membership of the association must not be taken to confer on a person any right, title or interest, whether legal or equitable, in the property of the association.
- (2) Except as provided by this Act or the rules or constitution of an association, a member of the committee, the secretary or a member of the association is not, merely because of being such a member or the secretary, liable to contribute towards the payment of—
- (a) the debts and liabilities of the association; or
  - (b) the costs, charges and expenses of the winding up of the association.

Inspection  
of rules and  
minutes

- 36. (1)** Upon receipt of a request in the prescribed manner, an association shall permit a member at any reasonable time to inspect—
- (a) any record of the association;
  - (b) minutes of general meetings of the association.
- (2) An association shall upon a written request and upon payment of the prescribed fees, within fourteen (14) days, furnish a member with a copy of anything referred to in subsection (1).

Inspection  
of register of  
members

- 37.** An association shall, if requested to do so by one of its members and subject to section 38, permit the member at a reasonable time to inspect the register of members.

Information  
relating to  
members

- 38.** (1) A person shall not use information about another person obtained from the register of members of an association to contact or send materials to that other person.
- (2) A person shall not disclose information about another person obtained from the register of members of an association knowing that the information is likely to be used to contact or send materials to the other person.
- (3) Subsections (1) and (2) do not apply if the use or disclosure of the information—
- (a) is directly related to the management or the purposes of the association; and
  - (b) is not prohibited by the rules or constitution of the association.

Restriction  
of access  
to personal  
information

- 39.** (1) A request may be made to the secretary of an association to restrict access to the personal information of a member recorded in the register of members of the association.
- (2) A request under subsection (1) may seek to restrict access so that the personal information is available only to the office holders.
- (3) A request under subsection (1) shall be made by—
- (a) the member; or
  - (b) the parent or guardian of a beneficiary who is a minor; or
  - (c) the intermediary of a beneficiary with unsound mind.
- (4) If the secretary is satisfied that there are special circumstances which justify doing so, the secretary shall agree to the request.

Disciplinary  
action

- 40.** (1) If an association proposes to take disciplinary action against a member in respect of that member's status as a member of the association it shall, subject to subsections (3) and (4), ensure the procedure under which disciplinary action is taken is in accordance with the procedure provided by the rules or constitution of the association.
- (2) In applying the disciplinary procedure, an association shall ensure that—
- (a) the member who is the subject of the disciplinary procedure—
    - (i) is informed of the grounds upon which the disciplinary action against the member is proposed to be taken;
    - (ii) has been given an opportunity to be heard in relation to the matter;

- (b) the outcome of the disciplinary procedure is determined by an unbiased decision-maker;
  - (c) to the extent that doing so is compatible with paragraphs (a) and (b), the disciplinary procedure is completed as soon as is reasonably practicable.
- (3) A member of an association who is the subject of a disciplinary procedure shall not initiate a grievance procedure in relation to the matter which is the subject of the disciplinary procedure, until the disciplinary procedure has been completed.

Grievance procedure

- 41.** (1) The rules of an association shall set out a grievance procedure for dealing with any dispute between—
- (a) a member and another member; or
  - (b) a member and the association.
- (2) A member may appoint any person to represent that member under this section.

#### PART IV - FINANCIAL PROVISIONS

Obligation to keep financial records

- 42.** (1) Every association shall maintain financial records that—
- (a) correctly record and explain its transactions, its financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared in accordance with this Part.
- (2) Every association shall retain its financial records for seven (7) years after the transactions covered by the records are completed.

Books of account

- 43.** (1) Every association shall keep one or more books of account, and shall cause to be entered therein details of all moneys received and payments made by the association.
- (2) Any association which contravenes subsection (1) of this section commits an offence.

Treasurer to render accounts

- 44.** (1) Every treasurer and every other officer of an association who is responsible for the accounts of the association or for the collection, disbursement, custody or control of its funds, shall subject to the constitution or rules of the association—
- (a) at least once in every year at such time as may be specified in the constitution or rules of the association; and
  - (b) at any other time at which such treasurer or officer may be required to do so by a resolution of the members of the association or by the rules thereof; and
  - (c) upon resigning or otherwise vacating office;

render to the association and its members a full and true account of all monies received and paid by the treasurer or officer during the period which has elapsed since the date of assuming office or, if such person has previously rendered an account, since the last date upon which that person rendered such account, and of the monies remaining in the treasurer's hands at the time of rendering such account, and of all bonds, securities or other property of the association entrusted to that person's custody or under their control.

- (2) After accounts have been rendered, the treasurer or other officer referred to in subsection (1) shall, if that officer is resigning or vacating office or if required to do so, forthwith hand over to the succeeding treasurer or officer, as the case may be, such monies as appear to be due from the treasurer, and all bonds, securities, effects, books, papers and property of the association in such officer's hands or otherwise under their control.
- (3) Any treasurer or other officer referred to in subsection (1) who contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six (6) months, or to both such fine and such imprisonment.

#### Annual returns

- 45.** (1) Every association shall furnish annually to the Registrar, on or before the prescribed date, such returns, audited accounts and other documents as may be prescribed.
- (2) The returns, audited accounts and other documents must have been adopted at the annual general meeting before being submitted under subsection (1).
- (3) If any return, account or other document furnished under subsection (1) is incomplete in any material particular, it shall be taken not to have been furnished for the purposes of subsection (1).
- (4) An association which contravenes subsection (1) commits an offence.
- (5) Any person who wilfully makes or orders or causes or procures to be made any false entry in or omission from any return, account or other document furnished under this section commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.
- (6) Any association which files returns out of time shall pay such penalty for late filing as may be prescribed in the Regulations.

Inspection of  
accounts and  
documents

- 46. (1)** An association shall make its books of account and all documents relating thereto, and a list of the members of the association, available—
- (a) for inspection by any officer or member of the association at such place and at such times as may be provided for in the constitution or rules of the association;
  - (b) for inspection by the Registrar, or by any person authorized by the Registrar in writing in that behalf, at the office of the Registrar at any reasonable time specified;
  - (c) when applying for renewal of registration.
- (2) An association which fails to make available to the Registrar, at the Registrar's office and at the specified time, any books of account, documents or lists of members when required under subsection (1) to make so available, commits an offence.
- (3) Any person who obstructs the Registrar or any such authorized person in the carrying out of an inspection under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.

Registrar  
may call for  
information and  
accounts

- 47. (1)** Where the Registrar has reasonable cause to believe that circumstances have arisen which render it expedient for the proper performance of the Registrar's functions under this Act to do so, the Registrar may, by order in writing, require an association to furnish the Registrar with—
- (a) a true and complete copy of its constitution or rules;
  - (b) a true and complete list of its officers and members;
  - (c) a true and complete copy of the minutes of any meeting held by the association at which officers of the association were elected or appointed or were ostensibly appointed or elected;
  - (d) a true and complete return of the number of meetings held by the association in Kenya within the period of six (6) months immediately preceding the date of the order, stating the place or places at which such meetings were held;
  - (e) duly audited accounts of the association covering such period as the Registrar deems necessary for the purpose for which the order is made;
  - (f) a copy of a current tax exemption certificate, where applicable;
  - (g) such other accounts, returns and other information as the Registrar may request.

- (2) An order given under subsection (1) shall require compliance within such period as may be specified, being not less than twenty-one (21) days, in respect of the documents specified in paragraphs (a), (b), (c), (d) and (f), and not less than sixty (60) days in respect of the documents specified in paragraph (e) and (g) of subsection (1).
- (3) Despite subsection (2) the Registrar may, on application made by an association extend the period specified therein.
- (4) Where the Registrar has ordered duly audited accounts under paragraph (e) of subsection (1), the cost of the audit shall, unless the Registrar otherwise directs, be paid out of the funds of the association in respect of which the order is made.
- (5) An association which, on the ground of its failure to comply with an order to furnish duly audited accounts under this section, has had its registration cancelled under section 57 shall not be registered again, and no association which, in the opinion of the Registrar, is a successor of such an association, shall be registered, unless in either case, in addition to compliance with the provisions of this Act concerning registration, the application for registration is accompanied by the duly audited accounts required by the order.
- (6) An association, which fails to comply with an order given under subsection (1) of this section commits an offence.
- (7) If any information or document furnished to the Registrar pursuant of an order given under this section is false, incorrect or incomplete in any material particular there shall be deemed to have been no compliance with such order.
- (8) In this section, the expression "duly audited" means audited by a person approved by the Registrar.

Discretion to publish certain information

48. (1) The Registrar may, where it appears to be in the interests of the members of any association, publish in the Gazette, or by advertisement in a newspaper having national circulation or in any other manner the Registrar may think fit, any information received by the Registrar under sections 38, 39 or 47 of this Act.
- (2) Any information published under this section shall not contain private details of members.

### *Annual General Meeting*

Annual General Meeting

49. (1) Every association shall, at least once in every year, hold a general meeting, to be called an Annual General Meeting, to which all its members shall be invited, and shall at such meeting—
  - (a) render a full and true account of the monies received and paid by the association, such account being audited in accordance with general accounting principles; and

- (b) cause to be elected or appointed all such officers, trustees and auditors and, where applicable, such committees as are required in accordance with the constitution or rules of the association.
- (2) Subsection (1) does not apply to an association that holds its annual general meeting—
  - (a) in accordance with subsection (3) or (4); or
  - (b) within the period allowed under an extension granted by the Registrar.
- (3) An association may hold its first annual general meeting at any time within the period of eighteen (18) months after its registration under section 13 or incorporation under section 17.
- (4) The second and any subsequent annual general meeting shall be held within five (5) months after the end of the financial year of the association.
- (5) Any association which contravenes subsection (1) of this section commits an offence.

Use of  
technology at  
general meeting

- 50.** (1) An association may hold its general meeting, or permit members to take part in its general meeting, by using any technology that allows members to positively identify themselves clearly and simultaneously communicate with each other participating member.
- (2) A member of an association who participates in a general meeting in a manner permitted under subsection (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

### *Statutory manager*

Appointment  
of statutory  
manager

- 51.** (1) The Registrar may apply to the High Court for the appointment of a statutory manager to conduct the affairs of an association.
- (2) On an application under subsection (1), the High Court may, by order, appoint a person as statutory manager of the association subject to the terms and conditions the Court determines.
- (3) The order shall specify—
- (a) the date of appointment;
  - (b) the appointee's name; and
  - (c) the appointee's business address.
- (4) If the appointee's name or business address changes, the appointee shall immediately give written notice of the change to the Registrar.

- (5) The High Court shall not appoint a statutory manager unless the Registrar certifies that, following an investigation pursuant to the provisions of this Act into the affairs of the association, or the working and financial condition of the association, the appointment is in the interests of its members, its creditors or the public.

Effect of  
appointment  
of statutory  
manager

- 52.** (1) On the appointment of a statutory manager of an association, the committee members and the secretary of the association cease to hold office.
- (2) A committee member or the secretary of the association is not eligible for appointment or election while the statutory manager is in office except as provided by this Part.

Powers of  
statutory  
manager

- 53.** (1) The statutory manager of an association—
- (a) has control of, and may manage, the property and affairs of the association;
  - (b) may dispose of all or part of the property of the association;
  - (c) may engage or discharge employees on behalf of the association;
  - (d) may summon officials to give the statement of affairs; and
  - (e) may perform any function and exercise any power that could, were the association not under statutory management, be performed or exercised by—
    - (i) the association;
    - (ii) the committee of the association;
    - (iii) a member of the committee;
    - (iv) the secretary of the association; or
    - (v) the members of the association.
- (2) For the avoidance of doubt and without limiting subsection (1)(e), the statutory manager may perform any function and exercise any power the association has as trustee.
- (3) A statutory manager shall, upon assuming management of an association, discharge the duties with diligence and in accordance with sound financial principles and, in particular, with due regard to the interests of the members.
- (4) The responsibilities of a statutory manager include—
- (a) tracing, preserving and securing all the assets and property of the association;
  - (b) recovering all debts and other sums of money due to and owing to the association;
  - (c) evaluating the solvency and liquidity of the association;

- (d) assessing the association's compliance with the provisions of this Act and its regulations;
  - (e) determining the adequacy of the capital and reserves and the management of the association and recommending to the Registrar any restructuring or re-organization which the statutory manager considers necessary and which, subject to the provisions of any other written law, may be implemented by the statutory manager on behalf of the association; and
  - (f) obtaining from any former officer, secretary or employee of the association, any documents, records, accounts, statements, correspondence or information relating to its business.
- (5) The statutory manager shall, within a period of twelve (12) months from the date of appointment, prepare and submit to the Registrar a report on the financial position and the management of the association with recommendations as to whether—
- (a) the association is capable of being revived; or
  - (b) the association should be liquidated.
- (6) Neither the Registrar or any other officer or employee of the Department, nor the statutory manager or any other person appointed, designated or approved by the Registrar under the provisions of this Part shall be liable in respect of any act or omission done in good faith in the execution of assigned duties.

Revocation of appointment of statutory manager

- 54.** (1) A statutory manager of an association shall hold office until the revocation of such appointment.
- (2) The appointment of a statutory manager shall be revoked—
- (a) on completion of work; or
  - (b) on the written recommendation of the Registrar to the High Court, if the Registrar is dissatisfied with the statutory manager's performance.
- (3) The High Court shall, before revoking the appointment of a statutory manager of an incorporated association,—
- (a) appoint another statutory manager; or
  - (b) be satisfied that the committee members of the association have been elected in accordance with its rules at a meeting convened by the statutory manager in accordance with those rules; or
  - (c) be satisfied that the Registrar has appointed committee members of the association under subsection (9).
- (4) A statutory manager's appointment is revoked if any of the following occurs—
- (a) on application by the Registrar, the High Court orders the revocation of the appointment of a statutory manager;

- (b) a liquidator of the association is appointed by the High Court; or
- (c) the Registrar cancels the registration of the association under section 58.

- (5) Immediately on the revocation of a statutory manager's appointment, the statutory manager shall submit to the Registrar a report showing how the statutory management was carried out.
- (6) A statutory manager shall have access to the records and documents of the association for purposes of preparing the report under subsection (3).
- (7) The Registrar may provide a copy of the report submitted to the Registrar under subsection (5) to the association.
- (8) On submitting the report under subsection (5) and accounting fully in relation to the statutory management of the association to the satisfaction of the Registrar, the statutory manager shall be released from any further duty to account in relation to the statutory management of the association other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or its Regulations.
- (9) The Registrar shall appoint committee members of an association for which a statutory manager is appointed in the manner prescribed under the Regulations.
- (10) Committee members elected or appointed in accordance with this section—
  - (a) shall take office on revocation of the statutory manager's appointment; and
  - (b) in the case of committee members appointed by the Registrar—shall hold office, subject to section 62, until the next annual general meeting of the association after that revocation.

Statutory  
manager  
to report to  
Registrar

- 55.** (1) On the receipt of a request from the Registrar, a statutory manager shall, without delay, prepare and give to the Registrar a report showing how the statutory management is being carried out.
- (2) The Registrar may give a copy of the report to the association.

Additional  
powers of  
Registrar

- 56.** (1) If the Registrar appoints committee members of an association under section 54 the Registrar may, by written notice given to the association, specify—
- (a) a time during which this section is to apply in relation to the association;
  - (b) the terms and conditions on which all or any of the committee members hold office; and
  - (c) with the consent of the High Court, the rules that are to be the association's rules.

- (2) While this section applies to an association, the Registrar may—
- (a) from time to time remove and appoint committee members;
  - (b) from time to time, vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1)(b);
  - (c) with the consent of the High Court, amend all or any of the rules specified under subsection (1)(c).
- (3) The Registrar may, by written notice to the association, extend the time for which this section is to apply in relation to the association.
- (4) A rule specified by the Registrar under this section as a rule of an association—
- (a) is not to be altered except in the way set out in this section;
  - (b) if it is inconsistent with any other rule of the association, prevails over the other rule, and the other rule is to the extent of the inconsistency invalid;
  - (c) is a rule of the association for the purposes of this Act.

#### PART V - SUSPENSION AND CANCELLATION OF REGISTRATION

Cancellation or suspension of registration

- 57.** (1) The Registrar may cancel the registration of an association where—
- (a) an application for cancellation is made in accordance with the provisions of section 61; or
  - (b) the Registrar has reasonable cause to believe that the registration should be cancelled or suspended on the grounds that—
    - (i) the association has among its objects, or is, likely to pursue, or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Kenya; or
    - (ii) the interests of peace, welfare, or good order in Kenya would be likely to be prejudiced by the continued registration of the association; or
    - (iii) the terms of the constitution or of the rules of the association are in any respect repugnant to or inconsistent with any written law; or
    - (iv) the association has wilfully, and after notice from the Registrar, contravened any of the provisions of its constitution or of its rules, or has contravened section 23 of this Act; or
    - (v) the association has failed to comply, within the time allowed for compliance, with an order made under section 30 of this Act; or
    - (vi) the association has dissolved itself; or

- (vii) the executive of the association is constituted otherwise than in conformity with its constitution and rules; or
  - (viii) a person has become an officer of the association who has been for some time an officer of an association which has been refused registration under this Act or which has had its registration cancelled under this section, and the Registrar has given written notice to the association in the prescribed form that such officer must be removed within a period being not less than seven (7) days from the date of the notice specified in the notice, and the officer has not been removed within that period; or
  - (ix) the association has failed to furnish, within the time allowed, one of the documents required by section 57(1) of this Act; or
  - (x) the association is, or has without duly notifying the Registrar in the prescribed form become, a branch of or affiliated to, or connected with, any organization or group of a political nature established outside Kenya.
- (2) The Registrar shall, give written notice in the prescribed form to the association calling upon it to show cause, within such period as is specified in the notice, why its registration should not be cancelled or, as the case may be, suspended; and, if the association fails to show cause to the satisfaction of the Registrar within the time specified, the Registrar may cancel or suspend the registration or incorporation of the association.
- (3) Where the registration of an association has been suspended under this section, an association shall not take any action, nor permit any action to be taken, in furtherance of its objects except—
- (a) the payment of its debts; and
  - (b) such action as the Registrar may from time to time authorize.
- (4) The Registrar may, at any time after conducting such investigations as the Registrar deems necessary and giving the association an opportunity to be heard, cancel any registration made under section 13 or 17 of this Act.
- (5) The Registrar shall cancel the registration of any association which has ceased to be an association within the meaning of this Act, or which the Registrar has, under paragraph (ii) of subsection (2) of section 9 of this Act, declared to be an association dangerous to the good government of the Republic.
- (6) Where under subsection (1) the Registrar cancels the registration of an association, the Registrar shall at the same time cancel the registration of every branch of that association.

Cancellation on winding up

- 58.** (1) The Registrar may, by notice published in the *Gazette*, cancel the registration of an incorporated association that has been wound up or has commenced to be wound up.
- (2) The cancellation of registration under this section shall not affect the winding up of the incorporated association.

Cancellation on ceasing to operate

- 59.** (1) If the Registrar has reasonable cause to believe that an association is not in operation, the Registrar may, by written notice, require the association to show cause why its registration should not be cancelled.
- (2) The notice shall—
- (a) be served on the association at its registered address; or
  - (b) if service cannot reasonably be effected, be published in a newspaper having nationwide circulation.
- (3) The Registrar may, by notice published in the *Gazette*, cancel the registration of the association if—
- (a) sixty (60) days have expired since the notice under subsection (2) was given; and
  - (b) the Registrar is satisfied that the registration of the association should be cancelled.
- (4) If the registration of an association is cancelled under this section, the Registrar shall send notice of the cancellation to the registered address of the association.

Cessation of existence of association

- 60.** (1) If the Registrar has reason to believe that an association has ceased to exist, the Registrar may publish in the a daily newspaper with nationwide circulation, a notice calling upon such association to furnish the Registrar, within a period of three (3) months from the date of the notice, with proof of its continued existence.
- (2) If at the expiration of the period specified under subsection (1) the Registrar is satisfied that an association has ceased to exist, the Registrar shall cancel the registration, of the association and publish in a daily newspaper with nationwide circulation, the notice of such cancellation or rescission.
- (3) If the Registrar is satisfied beyond doubt that an association has ceased to exist, the Registrar may immediately proceed under subsection (2) without having previously published a notice in a newspaper of nationwide circulation, and the remaining provisions of that subsection shall apply accordingly.

Application for  
cancellation of  
registration

- 61.** (1) An application may be made to the Registrar to cancel the registration of an association if the association—
- (a) has gross assets of less than one hundred thousand (100,000/=) shillings or such other amount as is prescribed by regulations;
  - (b) has no outstanding debts or liabilities;
  - (c) has paid all fees and penalties applying to it under this Act; and
  - (d) is not a party to any legal proceedings.
- (2) An application under subsection (1) may be made—
- (a) by the association if the association has passed a special resolution approving the making of the application;
  - (b) if the association is not in operation, by a member or former member of the association;
  - (c) by a statutory manager of the association appointed under section 51; or
  - (d) if the association is under voluntary administration, by the administrator of the association.
- (3) An application made under this section shall—
- (a) be in the approved form;
  - (b) be accompanied by the prescribed fee; and
  - (c) include a declaration from the applicant—
    - (i) that all of the matters specified in subsection(1) exist in relation to the association;
    - (ii) that the applicant is qualified under subsection (2) to make the application;
    - (iii) in the case of an application by a member or former member of the association, that the association is not in operation; and
    - (iv) setting out the reasons why the applicant has formed the view that the registration of the association should be cancelled.

Appeal from  
order of refusal,  
cancellation or  
suspension

- 62.** (1) A body aggrieved by the Registrar's refusal to register it under section 14, or association aggrieved by the cancellation or suspension of its registration under section 57 may within thirty (30) days of such refusal, cancellation or suspension, appeal to the Cabinet Secretary.
- (2) The Cabinet Secretary shall within thirty (30) days of receipt of an appeal under subsection (1) inform the association aggrieved of the Cabinet Secretary's decision.
- (3) A body or association aggrieved by the decision of the Cabinet Secretary under subsection (2), may within thirty (30) days of such decision appeal to the Tribunal.

- (4) Notwithstanding the provisions of subsection (1) of section 9, where an association other than an association specified in paragraphs (i), (ii) or (iii) subsection (2) of section 9, lodges an appeal under subsection (1), such association shall not, pending the decision on the appeal, be an unlawful association.

### PART VI — WINDING UP

Winding up

- 63.** (1) The Registrar may apply to the High Court for the winding up of an association if the association—
- (a) has by special resolution resolved that it be wound up by the Registrar;
  - (b) suspends its operations for a whole year;
  - (c) is unable to pay its debts;
  - (d) has secured pecuniary profit for its members;
  - (e) has, as trustee, secured pecuniary profit for its members;
  - (f) has engaged in activities outside the scope of its purposes;
  - (g) has not lodged with the Registrar copies of the financial statements of the association for each of the preceding two years;
  - (h) obtained its registration by fraud or mistake;
  - (i) exists for an illegal purpose; or
  - (j) has—
    - (i) been given notice by the Registrar of a breach of this Act or its regulations or the rules of the association; and
    - (ii) failed to remedy the breach within the time specified in the notice.
- (2) An application for the winding up of an association under this section shall be made by—
- (a) the association;
  - (b) a member of the association;
  - (c) a creditor of the association;
  - (d) the Registrar.

Winding-up  
of certain  
associations

- 64.** The Registrar may, by instrument in writing—
- (a) appoint a person (in this Part referred to as the receiver) to be the receiver of an association which under Part II has been declared an unlawful association or which has had its registration cancelled or has otherwise ceased to exist; and
  - (b) vest in the receiver all property, both movable and immovable, of the association and where the Registrar does so, the receiver shall proceed to wind up the affairs of the association.

Procedure where  
association  
solvent

- 65.** (1) If, after all the debts and liabilities of the association of which the receiver has notice and the costs of the winding-up have been satisfied or provided for, there are any surplus assets, the receiver shall prepare and submit to the Registrar a scheme for the disposal of those assets.
- (2) A scheme developed under paragraph (1) shall be as close as possible to the goals and objectives of the association which has been wound up.
- (3) If, after making such amendments as the Registrar may think fit, the Registrar approves a scheme submitted under subsection (1) of this section, the Registrar shall endorse such approval, after which the receiver shall distribute the surplus assets in accordance with the scheme.

Procedure where  
association  
insolvent

- 66.** (1) Where the assets of the association are insufficient to enable the debts and liabilities of which the receiver has notice and the costs of the winding-up to be satisfied in full, the receiver shall set aside a sum sufficient to meet the costs of the winding-up, and shall divide the balance among the creditors who have proved in proportion to the size of their claims.

Act No. 18 of  
2015

- (2) Sections 471 to 493 inclusive of the Insolvency Act shall apply to the winding-up of an association under this section as they apply to the winding-up of a company.

Supplementary  
provisions as to  
winding-up

- 67.** (1) No stamp duty shall be payable on an instrument made under section 64 of this Act, and so far as the instrument affects registered land—
- (a) it shall be delivered by the receiver to the person responsible for registration of title, who shall register it accordingly without payment of any fee; and
- (b) the vesting of the land in the receiver shall take place on the registration of the instrument.

Cap. 53

- (2) For the purpose of discovering, taking possession of, recovering and realizing the property of the association, the receiver shall have all the powers vested in the official receiver or a trustee in bankruptcy by the Bankruptcy Act.
- (3) Before distributing any assets under this Part, the receiver shall appoint a day before which the creditors of the association are required to prove their claims or be excluded from any distribution made before they have proved their claims, and shall give notice of the appointment in the Gazette, and individually to the creditors where practicable.

Act No. 18 of  
2015

- (4) The receiver may charge fees on winding-up an association at the rate specified in the Insolvency Act (Winding-up Fees) Rules, or such other fees as the Registrar in any particular case, may order.

- (5) The Registrar may, for the purpose of enabling an association to wind up its own affairs, in writing, suspend the operation of any instrument made under section 64 of this Act for such period as he or she may seem expedient.

Part not to apply to forfeited property

- 68.** The provisions of this Part shall not apply where an association has forfeited its property.

## PART VII – INVESTIGATION OF OFFENCES AND PUNISHMENT OF OFFENDERS

Power to investigate

- 69.** (1) If the Registrar determines it is necessary to do so, the Registrar may constitute an investigative panel consisting of not less than three (3) persons to investigate such cases as the Registrar may refer to the panel.

- (2) The panel shall have power to require any person who it has reason to believe is able to give any information as to—

- (a) the existence or operation of any unlawful association, or suspected unlawful association;
- (b) the operations of any association; or
- (c) the operations or property of an association which has been dissolved or has otherwise ceased to exist;

to attend before it at a specified time, and such attendance may be required at any police station or police office situated within the county in which that person resides, or for the time being is or is found, or at the office of any administrative officer within such county, or at the office of the Registrar.

- (3) Any person who without reasonable cause—

- (a) fails to comply with a requirement made under subsection (2);
- (b) having attended in compliance therewith, refuses or fails to give their correct name and address and to answer truthfully all questions that may be properly put to that person; or
- (c) fails to produce all documents in their custody, possession or power relating to such association or suspected association which the person is required to produce;

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

- (4) The Registrar shall be the secretary to the panel and shall record, in writing, any statement made to the Registrar by the person attending before the Registrar, whether such person is suspected of having committed an offence under any law or not.

- Act No 11 of 2014
- (5) The written statement under subsection (4) shall be read to the person making it in a language the person understands and after making such corrections as that person may wish, be signed by the person making it.
- (6) If any person does anything which constitutes an offence under subsection (3), the Registrar may, if he or she considers it advisable to provide for the future identification of such person, order that a photograph and impressions of fingerprints of such person be taken, and section 21, but not including the proviso to subsection (1) thereof, of the National Police Service Act shall apply accordingly as though the person were in lawful custody.
- Powers of entry, arrest and search
70. (1) A magistrate, a police officer of or above the rank of Assistant Inspector or any police officer authorized in writing by a magistrate or by such a police officer may without warrant enter with or without assistance any house or building or any place in which such officer has reason to believe that a meeting of an unlawful association, or of persons who are members of an unlawful association, is being held, and may without warrant arrest or cause to be arrested all persons found therein, and search such house, building or place, and seize or cause to be seized all insignia, banners, arms, books, papers, documents and other property which the officer has reasonable cause to believe belong to an unlawful association or are in any way connected with the purpose of the meeting.
- (2) Despite subsection (1) —
- (a) an officer shall act under this section without a warrant only if the officer has reasonable cause to believe that the delay occasioned in obtaining a warrant would seriously hinder the officer in the performance of their duties;
- (b) section 36 of the Criminal Procedure Code shall apply in the case of every person arrested without a warrant under this section;
- (c) if anything is seized by such officer, the officer shall cause it to be forthwith brought before a court, in order that it may be dealt with according to law.
- (Cap. 75)
- Offences cognisable
71. Offences under sections 9, 10 and 11 of this Act shall be cognisable to the police.
- False and misleading statements
72. (1) A person shall not, in a document referred to in subsection (6) make or authorise the making of a statement that the person knows is false or misleading in a material particular.

- (2) A person shall not, from a document referred to in subsection (6), omit or authorise the omission of anything knowing that the omission makes the document false or misleading in a material respect.
- (3) A person shall not, in a document referred to in subsection (6), make or authorise the making of a statement that is false or misleading in a material particular without having taken reasonable steps to ensure that the statement was not false or misleading in a material particular.
- (4) A person shall not, from a document referred to in subsection (6), omit or authorise the omission of anything without which the document would be misleading, without having taken reasonable steps to ensure that the document did not omit anything without which the document would be misleading.
- (5) For the purposes of this section, a person is taken to have authorised the making of a statement in, or the omission of a thing from, a document if at a meeting, a person votes in favour of a resolution approving, or otherwise approves, the document.
- (6) This section applies in relation to a document that is—
  - (a) required by or for the purposes of this Act;
  - (b) lodged with or submitted to the Registrar;
  - (c) a declaration made under this Act; or
  - (d) submitted to a general meeting of members of an incorporated association.

Use of the word  
"Incorporated"

- 73.** Only an association incorporated under this Act may use the title "Incorporated" or "Inc." after its name.

Qualified  
privilege

- 74.** (1) A person who performs any function or exercises any power as the auditor or statutory manager of an association has qualified privilege in respect of a statement made by the person, whether orally or in writing, in the course of performing those functions or exercising those powers.
- (2) An independent accountant who conducts a review of the accounts of an association under section 97 or 99 has qualified privilege in respect of a statement made by the person, whether orally or in writing, in the course of conducting that review.
- (3) A person has qualified privilege in respect of publishing a document—
- (a) prepared by an auditor for the purposes of this Act; or
  - (b) required by or under this Act to be lodged, regardless of whether or not the document has been lodged.

Proceedings  
against  
associations

**75. (1)** Where an association is charged with an offence under this Act or its Regulations, the association may appear by a representative, who may enter a plea on behalf of the association and conduct the association's defence.

(2) In this section, "representative" in relation to an association means a person who the court is satisfied has been duly appointed in writing by the association to represent it, but a person so appointed shall not by virtue of such appointment be qualified to act on behalf of the association before any court for any purposes other than those specified in this section.

Forfeiture

**76.** A court may at any time order that any books, accounts, writings, banners, insignia or other property belonging to any unlawful association shall be forfeited and delivered to the Registrar for disposal in such manner as the Registrar may deem fit.

### PART VIII — EVIDENCE

Admissibility of  
certified copies  
and extracts

**77. (1)** In any legal proceedings, any document purporting to be a copy of or an extract from any register or document kept by the Registrar, and purporting to be certified by the Registrar as a true copy or extract as aforesaid, shall be admissible as *prima facie* evidence of the contents of such register or document.

(2) In the absence of evidence to the contrary, it shall be presumed that the signature on any such certificate is genuine and that the person signing it held the office and qualifications which they professed to hold at the time they signed it.

(3) No process for compelling the production of any document kept by the Registrar shall issue from any court except with the leave of that court, and any such process which is so issued shall bear a statement that it is issued with the leave of the court.

(4) The Registrar shall not, in any legal proceedings to which the Registrar is not a party, be compellable—

(a) to produce any document the contents of which can be proved under subsection (1); or

(b) to appear as a witness to prove the matters, transactions or accounts recorded in any such document;

unless the court, for special cause, so orders.

General  
presumptions

**78. (1)** In any prosecution or other proceedings under this Act—

(a) where it is proved that a club, company, partnership or association is in existence, it shall be presumed that such club, company, partnership or association is an association within the meaning of this Act, unless the contrary is proved;

(b) where it is alleged that an association is an unlawful association, the burden of proving that it is a registered association, or that it is not an association, shall lie on the person charged;

- (c) a person named in the register kept by the Registrar as the holder of an office of an association shall be presumed to be the holder of that office or as the case may be, an office of that association, until the contrary is proved; and
- (d) it shall not be necessary for the prosecution to prove that an association possesses a name, or that it has been constituted or is usually known under a particular name.
- 79.** (1) In any prosecution under this Act, where any books, accounts, writings, lists of members, seals, banners or insignia of or relating to, or purporting to relate to, an association are found in possession of any person, it shall be presumed, until the contrary is proved, that such person is a member of that association, and the association shall be presumed, until the contrary is proved, to be in existence at the time such books, accounts, writings, lists of members, seals, banners or insignia are so found.
- (2) Where any books, accounts, writings, lists of members, seals, banners or insignia of or relating to an association are found in the possession of any person, it shall be further presumed, until the contrary is proved, that that person assists in the management of that association.
- 80.** In any prosecution under this Act, it shall be no objection to the admissibility of evidence as to the constitution or rules, objects or activities of any association that the witness tendering such evidence is not or has not been a member of any unlawful association.

Presumption of membership and existence of association

Evidence of membership of unlawful association

### PART IX — ASSOCIATIONS TRIBUNAL

Establishment of the Associations Tribunal

- 81.** (1) There is established a Tribunal to be known as the Associations Tribunal (in this Act referred to as the "Tribunal"), which shall consist of—
- (a) five members, two of whom shall be the chairperson and the vice-chairperson, respectively; and
- (b) a Deputy Registrar.
- (2) Subject to subsection (3), the chairperson and vice-chairperson of the Tribunal shall be appointed by the Commission and shall be persons of opposite gender.
- (3) The Cabinet Secretary shall through a competitive process, select six and nine suitable nominees for the positions of chairperson and vice-chairperson and members respectively, and forward their names to the Commission for appointment.
- (4) The Commission shall appoint two of the six nominees for the posts of chairperson and vice-chairperson and three of the nine nominees as selected under sub-section (3) as members of the Tribunal.

- (5) In nominating and appointing chairperson and members of a Tribunal under this section, the Cabinet Secretary and the Commission shall respectively take cognizance of the provisions of the Constitution relating to regional and other diversities of the people of Kenya.
- (6) The provisions of the Judicial Service Act relating to discipline of judicial officers shall apply with necessary modifications to members of a Tribunal.
- Qualifications**
- 82.** (1) A person shall be qualified for appointment as the chairperson or a vice-chairperson of the Tribunal if that person—
- (a) is a Kenyan citizen;
  - (b) holds a degree in law from a university recognized in Kenya and is an advocate of the High Court of Kenya;
  - (c) has not less than ten years post qualification experience; and
  - (d) meets the requirements of Chapter Six of the Constitution.
- (2) A person is qualified for appointment as a member of the Tribunal if that person—
- (a) is a Kenyan citizen;
  - (b) holds a degree from a university recognized in Kenya;
  - (c) has knowledge and experience of not less than five (5) years in their respective field;
  - (d) meets the requirements of Chapter Six of the Constitution.
- Disqualifications**
- 83.** A person is not qualified for appointment as the chairperson, vice chairperson or as a member of the Tribunal if the person—
- (a) is of unsound mind;
  - (b) is an undischarged bankrupt;
  - (c) has been removed from any office for gross violation of the Constitution or any other written law; or
  - (d) is convicted of a felony.
- Vacancy**
- 84.** (1) The office of the chairperson, vice chairperson or member of a Tribunal becomes vacant if the holder —
- (a) dies;
  - (b) resigns from office by notice in writing addressed to the Cabinet Secretary;
  - (c) if the member accepts any office the holding of which, if the person were not a member of the Tribunal, would make that person ineligible for appointment to the office of a member of the Tribunal;

- (d) is convicted of a felony;
  - (e) completes their term of office;
  - (f) is absent from three consecutive meetings of the Tribunal without good cause; or
  - (g) is removed from office on any of the following grounds—
    - (i) gross violation of the Constitution or any other written law;
    - (ii) gross misconduct or misbehaviour;
    - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
    - (iv) incompetence or neglect of duty; or
    - (v) bankruptcy.
- (2) A vacancy under this section shall be filled within three (3) months.
- Tenure**
- 85.** (1) The chairperson of the Tribunal shall be appointed for a term of four (4) years and shall be eligible for re-appointment for one more term of four (4) years.
- (2) The vice-chairperson and members of the Tribunal shall be appointed for a term of three (3) years and shall be eligible for re-appointment for one more term of three (3) years.
- Power to seek technical advice**
- 86.** (1) The Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings.
- (2) A person whose advice is sought under subsection (1) shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.
- Jurisdiction of the Tribunal**
- 87.** (1) The Tribunal shall have power to entertain cases arising out of the Registrar's decision or in any other matter prescribed under this Act.
- (2) The jurisdiction conferred upon the Tribunal under sub-section (1) excludes criminal jurisdiction.
- Proceedings of the Tribunal (Cap. 80).**
- 88.** (1) The Tribunal shall, upon an application made to it in writing by any party on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned or any relevant committee thereof, as the case may be.
- (2) The Tribunal shall sit at such times and in such places as it may appoint.
- (3) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

- (4) Except as expressly provided in this Act or its regulations, the Tribunal shall regulate its own proceedings.
- (5) Subject to this Act or any other law, the Tribunal shall—
  - (a) conduct its proceedings with minimum formality;
  - (b) hear and determine the matter expeditiously;
  - (c) not be bound by the rules of evidence and procedure;
  - (d) encourage mediation, arbitration and other forms of alternative dispute resolution;
  - (e) undertake investigation of fact if the Tribunal is of the opinion that such investigation is necessary for the ends of justice; and
  - (f) act according to equity, good conscience and the substantial merits of the case without undue regard to legal technicalities.

#### Quorum

- 89.** (1) The chairperson of a Tribunal shall preside at all sittings of the Tribunal at which the chairperson shall be present and in the absence of the chairperson, the vice-chairperson shall preside.
- (2) The quorum of a Tribunal shall be three (3) members including the chairperson or the vice-chairperson as the case may be.

#### Disclosure of interest

- 90.** (1) The chairperson or a member of the Tribunal who has a direct or indirect personal interest in a matter being considered or to be considered by the Tribunal shall as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of such interest.
- (2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting and the chairperson or member shall not take part in the consideration or discussion or hearing of or vote during any deliberations on the matter.
- (3) A chairperson or member who fails or neglects to disclose an interest commits an offence and on conviction shall be liable to a fine not exceeding five hundred thousand shillings and shall become ineligible to hold a public office.

#### Awards of the Tribunal

- 91.** (1) The Tribunal may—
- (a) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;
  - (b) take evidence on oath and may for that purpose administer oaths; or
  - (c) on its own motion summon and hear any person as witness.

- (2) Any person who—
- (a) fails to attend the Tribunal after having been required to do so under subsection (1)(a);
  - (b) refuses to take oath or affirmation before the Tribunal or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;
  - (c) knowingly gives false evidence or information which the person knows to be misleading before the Tribunal; or
  - (d) at any sitting of the Tribunal—
    - (i) wilfully insults any member or officer of the Tribunal;
    - (ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal; or
    - (iii) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal,
- commits an offence under this Act.

Powers of review

**92.** Any person who considers themselves aggrieved—

- (a) by a decision of a Tribunal from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decision of a Tribunal from which no appeal is allowed by this Act,

may apply for a review of the decision to the Tribunal and the Tribunal may make such order thereon as it deems fit.

Appeals to the High Court

**93.** (1) Any person aggrieved by a decision or order of the Tribunal may, within thirty (30) days of such decision or order, appeal against such decision or order, to the High Court.

(2) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or, where the appeal has been commenced, until the appeal has been determined.

(3) Upon the hearing of an appeal under this section, the High Court may—

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

- (d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.
- (e) The decision of the High Court on any appeal under this section shall be final.

Enforcement of decisions

**94.** Decisions of the Tribunal shall be executed and enforced in the same manner as that of a court of law.

General penalty under Part VIII

**95.** A person who commits an offence under this Part shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding (6) months or both.

### PART X – GENERAL PROVISIONS

Official seal

**96.** (1) The official seal of the Registrar—

- (a) shall be kept as directed by the Registrar; and
- (b) shall not be used except as authorised by the Registrar.

(2) All courts, tribunals and other persons acting judicially—

- (a) shall take judicial notice of the official seal of the Registrar on a document; and
- (b) until the contrary is proved, shall presume that it was duly affixed.

Agents of the Registrar

**97.** The Registrar may enter into arrangements or agreements with any person or body to act as the agent of the Registrar in the performance of the Registrar's functions under this Act.

Register

**98.** (1) The Registrar shall keep a register of associations in the prescribed form.

(2) The register shall be open for public inspection to enable members of the public to have access to—

- (a) information about the purposes, rules, contact details and secretaries of associations; and
- (b) the financial statements of associations.

(3) The register shall include the following details for each association registered under this Act—

- (a) the number issued to the association by the Registrar on its registration or incorporation;
- (b) its name;
- (c) any previous names and the dates they were in use;
- (d) its current registered address and the date registered;
- (e) its previous registered address and the date registered;

- (f) its current postal address;
  - (g) whether or not it is currently registered;
  - (h) the date it was registered;
  - (i) the name and date of appointment of its current secretary;
  - (j) the name and date of appointment of each previous secretary and public officer;
  - (k) the date on which the financial year of the association ends;
  - (l) a copy of each financial statement lodged and the date of lodgement;
  - (m) the date of its last annual general meeting;
  - (n) a copy of its rules or constitution and the date they were approved by the association; and
  - (o) any other information prescribed by the Regulations.
- (4) The register shall contain the following details for each association the registration of which has been cancelled—
- (a) the name of the association immediately before its registration was cancelled; and
  - (b) the date that its registration was cancelled.
- (5) Subject to any other relevant law, the Registrar may destroy or dispose of any document contained in the register if—
- (a) a transparency or electronic copy of the document has been incorporated in the register; and
  - (b) the Registrar considers it is no longer necessary or desirable to retain the original document.

Correction of register

- 99.** (1) The Registrar may, if the Registrar decides it is necessary to do so, correct any error or omission in the register of incorporated associations.
- (2) The Registrar may correct the register by—
- (a) inserting an entry;
  - (b) amending an entry; or
  - (c) omitting an entry.
- (3) Despite subsection (2) the Registrar shall not omit an entry in the register unless satisfied that the whole of the entry was included in error.

Restriction on personal information

- 100.** (1) A person whose personal information is held on the register of associations may apply to the Registrar to restrict public access to some or all of that personal information.

- (2) If the Registrar is satisfied that there are special circumstances which justify doing so, the Registrar may restrict public access to some or all of that person's personal information.
- (3) The restriction of public access under subsection (2) may be for such period and subject to such conditions as the Registrar thinks fit.
- 101.** (1) A person may apply to the Registrar for the release of personal information the access to which is otherwise restricted under section 97.
- (2) If the Registrar is satisfied that it is in the public interest to do so, the Registrar may decide to release some or all of the information to the person on any condition that the Registrar thinks fit.
- (3) If the Registrar decides to release restricted personal information, the Registrar shall give written notice of the decision to the person to whom the information relates.
- (4) The Registrar shall not release a person's restricted personal information without the consent of the person unless—
- (a) at least twenty-eight (28) days have elapsed since the Registrar gave notice to the person under subsection (3); and
  - (b) the person has not sought a review of the decision.
- 102.** (1) A person whose interests are affected by a decision of the Registrar under section 98 may apply to the Registrar for a review of the decision.
- (2) An application under subsection (1) shall be lodged with the Registrar within twenty-eight (28) days after notice of the decision was given.
- 103.** (1) Any person may, on payment of the prescribed fee, inspect—
- (a) the register of associations; or
  - (b) prescribed documents or documents of a prescribed class kept by the Registrar relating to an association.
- (2) Any person may, on payment of the prescribed fee, obtain—
- (a) a copy of a document that the person may inspect under subsection (1)(b); or
  - (b) a certified copy of a document that the person may inspect under subsection (1)(b).
- (3) If a reproduction, transparency or electronic copy of a document or an extract of information contained in a document and recorded in the register is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of the document.

- Duplicate certificate of registration **104.** A person may, on payment of the prescribed fee, obtain from the Registrar a certified duplicate of a certificate of registration of an association.
- Lodgement of documents on payment of fee **105.** Where a fee is payable to the Registrar for the lodgement of a document with the Registrar, the document is taken not to have been lodged until the fee has been paid.
- Orders binding if served **106.** An order made by the Registrar to any association under sections 18, 24 or 57 of this Act shall be binding—  
 (a) upon the association if served in accordance with section 58(1) of this Act; and  
 (b) upon every officer thereof upon whom the order or a copy thereof is served.
- Service of summons **107.** (1) Every order, notice, summons or other document issued under this Act or under its Regulations shall be validly served—  
 (a) on an association, if it is sent by registered post addressed to it at its registered postal address;  
 (b) on an individual, if it is served or is sent by registered post addressed to that person at the registered postal address of the association with which he or she is concerned; or  
 (c) through substituted service in a newspaper or any other manner for the time being recognized by law.  
 (2) Any document served by being sent through registered post shall be deemed to have reached the person or association to whom or to which it is addressed at the end of seven (7) days after the time of posting.
- Indemnification of public officers **108.** No suit shall lie against any public officer for anything done or omitted to be done by the public officer in good faith and without negligence in the intended exercise of any power or the intended performance of any duty conferred or imposed on the public officer by or under this Act.
- General penalty **109.** (1) Where an association is commits an offence under this Act for which no penalty is expressly provided, the association shall on conviction be liable to a fine not exceeding fifty thousand shillings, and in addition every officer thereof shall be on conviction of the like offence be liable to the like fine or to imprisonment for a term not exceeding six (6) months or to both such fine and such imprisonment.  
 (2) Where an employee or agent of an association commits an offence, or aids another to commit an offence, the employer or agent shall on conviction be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six (6) months or to both such fine and such imprisonment.

- (3) Despite subsection (2) an officer shall not be convicted of the offence if the officer establishes to the satisfaction of the court that they exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond their control.

## Regulations

- 110.** (1) The Cabinet Secretary may make regulations prescribing anything which under this Act may be prescribed, and generally for the better carrying out of the provisions of this Act.
- (2) Without prejudice to the generality of the powers conferred by subsection (1) regulations may—
- (a) prescribe the form of accounts to be kept by such associations as may be named, from time to time by notice in the *Gazette*, by the Cabinet Secretary responsible for matters relating to finance;
  - (b) securing the submission to the Registrar of periodical returns relating to the constitution, rules, membership and management of associations;
  - (c) prescribe penalties for the breach of any such rules, not exceeding in any case a fine of five thousand shillings or imprisonment for a term of six months or both such fine and such imprisonment;
  - (d) prescribe the particulars to be included in—
    - (i) applications or notifications to the Registrar;
    - (ii) certificates of registration issued by the Registrar;
  - (e) prescribe forms for the purposes of this Act;
  - (f) prescribe the fees payable to the Registrar in relation to—
    - (i) applications and notifications;
    - (ii) lodgement of documents;
    - (iii) inspection of the register of associations;
    - (iv) the production of copies of documents or duplicate certificates of registration or incorporation;
  - (g) prescribe the reasons for which the Registrar may refuse to register a body or decide that the continued registration of an association is inappropriate;
  - (h) prescribe model rules;
  - (i) prescribe matters which the financial statements of an association shall deal with;
  - (j) prescribe additional information to be included in the register of associations;
  - (k) the documents contained in the register of associations that a person may inspect;

- (l) the value of the gross assets of an association below which the association may apply to the Registrar to cancel its incorporation;
- (m) the fees an association may charge a member for the inspection or the copying of its rules and minutes;
- (n) prescribe the rules and procedure for the Tribunal;
- (o) prescribe offences against this Act or the regulations to be infringement offences;
- (p) prescribe in relation to each infringement offence, the penalty that is payable to expiate the offence; and
- (q) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

Transitional provisions  
Cap 108

**111.** (1) All societies registered under the Societies Act shall on commencement of this Act be deemed to be registered under this Act.

(2) Despite subsection (1) every society shall seek fresh registration under this Act within one year of coming into effect of this Act.

(3) All contracts and other legal obligations a society had contracted shall continue to be in force until the commencement of this Act.

(4) Nothing in this Act shall affect the validity of ownership of any property, including copyrights and patents, held in trust for societies.

(5) A person holding office at the time this Act comes into effect shall be deemed to be the bonafide office holder and shall continue in office for the remainder of their term.

Cap 108

(6) Regulations and forms prescribed under the Societies Act shall continue in force until the Cabinet Secretary gazettes other regulations and forms under this Act.

(7) Any association which has property at the coming into force of this Act shall within ninety (90) days of such commencement, apply for incorporation under section 17.

(8) All assets and liabilities of a society shall be deemed to be the assets and liabilities of that society until registered or incorporated under this Act.

Cap 108

(9) All licences and permits issued, acquired or otherwise obtained by a society under the Societies Act shall continue to be in force until registration or incorporation of that society under this Act.

Cap 108

(10) Nothing in this Act shall be construed to amount to, or result in a change of name of any society registered under Societies Act.

Repeal of Cap 108

**112.** The Societies Act (Cap 108) is repealed.

**SCHEDULE (S. 21)****Matters to be provided in the rules or constitution of every association**

1. The name of the association.
2. All the objects for which the association is to be established.
3. The persons to whom membership is open.
4. The rates of entrance and subscription fees (if any) for membership.
5. The method of suspension or expulsion of members.
6. The titles of officers, trustees and auditors and their terms of office, and the method of their election, appointment, dismissal and suspension.
7. The composition of committees (if any) of the association, the terms of office of members of such committees and the method of their election, appointment, dismissal and suspension.
8. The authority for and the method of filling vacancies on committees.
9. The frequency of, quorums for and dates of the general meetings referred to in this Act.
10. The custody and investment of the funds and property of the association, and the designation of the persons responsible therefor.
11. The purposes for which the funds may be used, and in particular the prohibition of the distribution of funds among members.
12. The inspection of the books and list of members of an association, by any member or officer under this Act.
13. The annual or periodical audit of accounts.
14. The formation of branches, if branches may be formed.
15. The manner of amending the name, constitution or rules of the association.
16. The manner of the dissolution of the association and the disposal of its property on dissolution.

## MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to provide a framework for the registration and incorporation of associations, establish a scheme for the registration of voluntary associations and other registrable bodies and make provision for corporate governance and financial accountability.

**Part I on Preliminary** provides for short title, interpretation, object and purpose. It further provides for appointment of Registrar by the Cabinet Secretary whose functions include: Implementation of the decisions of the Cabinet Secretary, formulation and development of policies on associations, day-to-day administration and management of the affairs of the Department. It also provides for powers of the Registrar, Deputy Registrar and Assistant Registrars.

**Part II on Registration of Associations** provides for reasons where registration may be denied, amalgamation of registered associations as well as application for incorporation, manner of effecting incorporation and reasons for refusal to register association as incorporated association.

**Part III on Administration of Associations** provides for general powers of an association, office and postal address, rules and constitution of associations, model rules prescribed by Registrar for registered associations and incorporated associations, amendment of rules or constitution, contents of constitution or rules, requirements for amending name, constitution etc of associations. It also provides for officers of associations, restriction of appointment of certain officers, requirements to notify changes of officers or title of office, disputes relating to officers, officers on dissolution, indemnity of office holders, purpose to act as officers. It further provides for provision on members in particular; register of members, membership of association, limitation of rights and liabilities of members, inspection of rules and minutes, inspection of register of members, information relating to members, restriction of access to personal information, disciplinary action and grievance procedure.

**Part IV on Financial Provision** provides for obligation to keep financial records, books of account, treasurer to render accounts, annual returns, inspection of accounts and documents, Registrar's power to ask for information and accounts, discretion to publish certain information. It also provides for annual general meeting, use of technology at general meeting, appointment of statutory manager of an association on such terms and conditions as the court has determined, powers of statutory manager, revocation of appointment of statutory manager, statutory manager to report to Registrar and additional powers of Registrar.

**Part V on Cancellation or Suspension of Registration** provides for cancellation on winding up, cancellation on ceasing to operate, cessation of existence of association, application for cancellation of registration, appeal from order of refusal and cancellation or suspension.

**Part VI on Winding Up** provides for winding up of certain associations, procedure where association is solvent, procedure where association is insolvent, supplementary provisions as relates to winding up and winding up procedure not to apply to forfeited property.

**Part VII on Investigation of Offences and Punishment of Offenders** provides for power to investigate, powers of entry, arrest and search, offences cognizable, false and misleading statements, use of the word "incorporated," qualified privilege, proceedings against associations and forfeiture.

**Part VII on Evidence** provides for admissibility of certified copies and extracts, general presumptions, presumption of membership and existence of association in addition to evidence of membership of unlawful association.

**Part IX on Associations Tribunal** provides for establishment of the Associations Tribunal, qualifications, disqualifications, vacancy, tenure of the members of the Tribunal including Chairperson and Vice Chairperson. It further provides for power of the Tribunal to seek technical advice, jurisdiction of the Tribunal, proceedings of the Tribunal, quorum, disclosure of interest, awards of the Tribunal, power of review, appeals to the High Court and Enforcement of decisions.

**PART on General Provisions** provides for official seal, agents of the Registrar, register, correction of register, restriction on personal information, release of restricted information, right of review, inspection of register and obtaining copies of documents, duplicate certificate of registration, lodgment of documents on payment of fee, orders binding if served, service of summons, indemnification of public officers, general penalty, regulation and transitional provisions.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

**Githu Muigai**

**Attorney-General**

**Dated the..... 2016**

## LIST OF STAKEHOLDERS

| No. | Organization  | Name of Participant                  | Contact Address   |
|-----|---|--------------------------------------|---|
| 1.  | Child Welfare Society   | Peter Njuguna                        | 0728592863  |
| 2.  | The CRADLE Children's Foundation                              | Juliet Maganya                       | 0724295339  |
| 3.  | Youth Agenda  | Gilford Kimathi                      | info@youthagenda.org<br>gilford.kimathi@youthagenda.org |
| 4.  | Green Belt Movement   | Lucy Wanjohi                         | 0722208909  |
| 5.  | FIDA  | Carolyne Lagat                       | 0704592913  |
| 6.  | Asian Foundation  | Meera Pandit (CEO)<br>Aurelio Rebelo | 0733234840<br>0722708903<br>asianfoundation@gmail.com   |
| 7.  | Kenya Society for the Blind                                   | Julian Kivasu- Director              | 020-6001541 Cell: 0722751095                            |
| 8.  | Population Council  | Mr. Peter Gaiku                      |   |
| 9.  | Undugu Society  | Mr. Kepher Obonyo                    | 0722206251<br>kepher@undugukenya.org                    |
| 10. | Kenya Voluntary Development Association                       | Raymond Gitonga Njeru                | 0726089086  |
| 11. | Alliance of Registered Churches and Ministries Kenya          | Apostle Isaack M. Mwangi             | 0722498888<br>apostleisaack@gmail.com                   |
| 12. | United Disabled Persons of Kenya                              | Stanley Mutuma<br>Juma Wycliff       | 0722126197  |
| 13. | The Supreme Council of the United Christian Churches of Kenya | Bishop Robert Mahiri                 | -   |
| 14. | International Peace Support Training Centre                   | Ruth Bolline                         | 0721949675<br>ruth.bolline@ipstc.org                    |
| 15. | SUPKEM  | Mr.Saad Khairallah                   | 0722-849066   |
| 16. | Tegla Loroupe Foundation                                      | Winnie Arek Anyango                  | 0702109847  |
| 17. | Wildlife Direct   | Elizabeth Gitari                     | 0723419706  |



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