

PUBLIC BENEFIT ORGANIZATIONS
PROTOTYPE CONSTITUTION
(AS PER SECTION 8(2)(a),8(4),8(5),8(6) OF THE PUBLIC
BENEFIT ORGANIZATIONS ACT, CAP 134)

CONSTITUTION OF GIVITBACK FOUNDATION (GBF)

1. DEFINITIONS

In this Constitution, unless the context otherwise requires:

"Act" means the Public Benefit Organizations Act, Cap. 134 of the Laws of Kenya, and includes any amendments or successor legislation.

"Board" or "Governing Body" means the governing body of the Foundation established under this Constitution and registered in accordance with the Act.

"Board Resolution" means a decision passed by the Governing Body at a duly convened meeting or by written resolution in accordance with this Constitution.

"Chairperson" means the person elected by the Governing Body to serve as the Chairperson of the Foundation.

"Constitution" means this Constitution of GivitBack Foundation (GBF) as amended from time to time in accordance with its provisions.

"County" means a county established under the Constitution of Kenya, 2010.

"Foundation" means GivitBack Foundation (GBF).

"Financial Year" means the period beginning on 1st July and ending on 30th June of the following year.

"General Meeting" means a meeting convened in accordance with this Constitution where such a meeting is required under the Act or this Constitution. *(Where applicable to a non-membership organization, references to a General Meeting shall be construed in accordance with the governance structure established by this Constitution.)*

"Office Bearers" means the Chairperson, Secretary and Treasurer of the Foundation.

"PBORA" means the Public Benefit Organizations Regulatory Authority established under the Act or its lawful successor.

"Person" includes a natural person, body corporate, partnership, trust or any other legal entity recognized by law.

"Public Benefit Activity" means an activity undertaken for the benefit of the public or a section of the public in accordance with the Act.

"Public Benefit Organization" or "PBO" means a public benefit organization registered under the Act.

"Registered Office" means the principal office of the Foundation as specified in this Constitution or as may subsequently be notified to the Public Benefit Organizations Regulatory Authority.

"Secretary" means the person elected to serve as Secretary of the Foundation.

"Trustee" means a member of the Governing Body elected or appointed in accordance with this Constitution.

"Treasurer" means the person elected to serve as Treasurer of the Foundation.

Words importing the singular shall include the plural and vice versa.

Words importing the masculine gender shall include the feminine gender and vice versa.

References to any written law shall include any amendment, re-enactment or replacement of that law.

2. NAME AND REGISTERED OFFICE

2.1. The name of the Organization is GivitBack Foundation (GBF) (hereinafter referred to as "the Organization").

2.2. The Registered Office of the Organization shall be situated at: Kijmax Plaza, 1st Floor, Room 11, Makutano Stores – KCB, Matuu, Machakos County, Kenya, and its postal address shall be P.O. Box 259–90119, Matuu, Kenya.

3. NATURE AND STATUS

3.1. The Organization is a non-membership Public Benefit Organization registered under the Public Benefit Organizations Act, Cap. 134 of the Laws of Kenya.

3.2. The Organization is a voluntary, autonomous, non-partisan and non-profit-making body corporate with perpetual succession by operation of section 10(3) of the Act.

4. PURPOSE AND OBJECTIVES

4.1. Main Objective: The primary purpose of the Organization is to identify, nurture and develop talent among children and youth through sports, mentorship, education support and strategic partnerships that create opportunities for personal growth, leadership and socio-economic empowerment.

4.2. Specific Objectives: The specific objectives of the Organization shall be to:

- Identify, nurture and develop talent among children and youth through sports and other talent development initiatives within schools and communities.
- Provide structured training, coaching, mentorship and exposure opportunities that enable children and youth to realize their full potential.
- Support the educational, life-skills, health, nutrition and psychosocial wellbeing needs of vulnerable children and youth as part of holistic talent development.
- Mobilize resources, establish partnerships and create pathways that connect talented children and youth to local, national and international opportunities.
- Establish sustainable talent development systems, including training camps, academies and the GBF Talent Hub, that promote leadership, discipline, social inclusion and socio-economic empowerment.

4.3. Public Benefit Test

The Organization shall operate for the public benefit of children, orphans and vulnerable children (OVCs), and youth.

5. MEMBERSHIP

5.3. The Organization is established as a non-membership Public Benefit Organization. Participation in the activities, programmes and initiatives of the Organization shall be entirely voluntary and shall not confer membership rights.

5.4. The Organization shall not have members. Governance and oversight of the Organization shall be vested in the Governing Body (Board of Trustees) constituted in accordance with this Constitution and the Public Benefit Organizations Act, Cap. 134 of the Laws of Kenya.

5.5. Individuals, institutions, volunteers, partners, donors, beneficiaries and supporters may participate in or support the activities of the Organization in accordance with policies approved by the Governing Body. Such participation or support shall not confer membership or voting rights.

5.6. The Governing Body may establish registers of Trustees, volunteers, partners, donors or other stakeholders as may be necessary for the proper administration of the Organization.

5.7. No person shall acquire membership rights in the Organization unless the Constitution is amended to change the Organization from a non-membership Public Benefit Organization to a membership Public Benefit Organization in accordance with the Public Benefit Organizations Act and this Constitution.

5.8. The Organization shall maintain such statutory registers and records as may be required under the Public Benefit Organizations Act and any other applicable law.

6. GOVERNANCE AND MANAGEMENT STRUCTURE

6.1. The General Meeting

6.1.1. The Organization is established as a non-membership Public Benefit Organization and shall therefore not have a General Meeting of members.

6.1.2. The Governing Body Meeting shall be the Foundation's highest decision-making forum and shall exercise all powers and functions that would ordinarily be vested in a General Meeting under a membership organization, in accordance with this Constitution and the Public Benefit Organizations Act.

6.2 The Governing Body

6.2.1. The Governing Body shall consist of eight (8) Trustees, comprising:

- Chairperson;
- Secretary;
- Treasurer; and
- Five (5) Trustees.

6.2.2. Three (3) of the members shall not be related to each other.

6.2.3. At least one-third (1/3) of the members shall be Kenyan citizens resident in Kenya.

6.2.4. The Executive Director may be an Ex-Officio member of the Governing Body without voting rights.

6.2.5. Functions of the Governing Body: The Governing Body shall:

- Select, appoint and remove its members in accordance with this Constitution.
- Appoint the external auditor.
- Amend this Constitution in accordance with Article 9 and the Public Benefit Organizations Act.
- Dissolve or wind up the Organization in accordance with this Constitution and applicable law.
- Set the strategic direction and policy framework and provide oversight of the Organization.
- Exercise fiduciary oversight and approve annual budgets, audited financial statements and strategic plans.
- Appoint, supervise, evaluate and, where necessary, remove the Executive Director.
- Ensure compliance with the Public Benefit Organizations Act and other applicable laws.
- Review the Organization's asset base, liabilities, income, expenditure, programmes and annual plans.
- Approve governance policies, regulations and by-laws.
- Establish committees and assign responsibilities necessary for the efficient administration of the Organization.
- Perform any other lawful function necessary for achieving the objectives of the Organization.

6.2.6. Responsibilities of the Chairperson: The Chairperson shall:

- Lead the Governing Body on organizational and financial matters to ensure legal compliance.
- Plan the annual cycle of Governing Body meetings.
- Chair all meetings of the Governing Body.
- Work in partnership with the Executive Director to ensure implementation of Governing Body resolutions.
- Call special meetings whenever necessary.
- Assist in preparing the agenda for Governing Body meetings.
- Subject to this Constitution, rule on matters relating to procedure and conduct of Governing Body meetings.
- Perform any other duties assigned by the Governing Body.

6.2.7. Responsibilities of the Secretary: The Secretary shall:

- Keep minutes of Governing Body meetings.
- Carry out official correspondence on behalf of the Organization.
- Arrange meetings of the Organization on the instructions of the Governing Body.
- Ensure statutory documents are filed with the appropriate regulatory authorities within the prescribed timelines.
- Maintain the Register of Trustees and other statutory records.
- Perform any other duties assigned by the Governing Body.

6.2.8. Responsibilities of the Treasurer: The Treasurer shall:

- Provide oversight and guidance on the financial management of the Organization.
- Ensure proper financial systems and internal controls are maintained.
- Oversee the Organization's bank accounts and financial transactions.
- Present financial reports, budgets and audited financial statements to the Governing Body.
- Advise the Governing Body on financial sustainability and prudent utilization of resources.
- Perform any other duties assigned by the Governing Body.

6.2.9. Tenure of Office and Appointment

Members of the Governing Body, including the Chairperson, Secretary and Treasurer, shall serve for a term of five (5) years and shall be eligible for further consecutive terms.

Vacancies shall be filled by appointment of the Governing Body in accordance with this Constitution.

6.3. The Management Body

6.3.1. The Management shall be headed by the Executive Director (ED) appointed by the Governing Body.

6.3.2. The Management shall be responsible for implementing the resolutions of the Governing Body and managing the day-to-day affairs of the Organization.

6.3.3. The Executive Director may serve as an Ex-Officio member of the Governing Body with no voting rights.

6.3.4. The Management may exercise such powers as may be delegated by the Governing Body to achieve the objectives of the Organization.

6.3.5. Transitional Arrangement: Pending the appointment of the Executive Director and establishment of the Management Body, the Founding Meeting may constitute an Interim Administrative Committee to coordinate the registration of the Organization, facilitate compliance with statutory and regulatory requirements, and undertake administrative functions necessary for the establishment of the Organization.

The Interim Administrative Committee shall cease to exist upon the earlier of:

- a) the appointment of the Executive Director; or
- b) a resolution of the Governing Body confirming that the Management Body has assumed its functions.

Upon dissolution of the Interim Administrative Committee, all records, assets, liabilities, contracts, official documents, statutory registers, financial records, and administrative responsibilities of the Organization shall be formally handed over to the Governing Body or the Executive Director, as applicable. The handover shall be documented through a written handover report and recorded in the minutes of the Governing Body.

6.4. Separation of Powers

The Governing Body shall be distinct from the day-to-day Management.

No member of the Management shall be a voting member of the Governing Body.

No member of the Governing Body shall be an employee or hold a salaried staff position within the Organization.

6.5. Supreme Authority

The supreme, fiduciary and strategic authority of the Organization shall vest in the Governing Body.

7. MEETINGS

7.1. General Meetings

7.1.1. The Organization is a non-membership Public Benefit Organization and shall therefore not hold General Meetings.

7.1.2. The Governing Body Meeting shall be the Foundation's highest decision-making forum and shall exercise all powers and functions that would ordinarily be vested in a General Meeting under a membership organization.

7.2. Governing Body Meetings

7.2.1. All Governing Body Meetings shall be convened by the Secretary in consultation with the Chairperson by giving at least fourteen (14) days' written notice, accompanied by the proposed agenda.

7.2.2. The Governing Body shall hold a minimum of four (4) ordinary meetings in every financial year.

7.2.3. Any Trustee may request a Governing Body Meeting, upon which the Secretary shall convene the meeting by giving at least seven (7) days' written notice, together with the proposed agenda.

7.2.4. Where the Secretary is absent, unavailable, or is the subject of the meeting, any Trustee may petition the Chairperson to convene a Governing Body Meeting within seven (7) days from the date of such petition.

7.2.5. The quorum for a Governing Body Meeting shall be five (5) Trustees, including at least two (2) Office Bearers. Where a quorum is not attained within thirty (30) minutes of the scheduled commencement time, the meeting shall stand adjourned to a date determined by the Chairperson, which shall not be later than fourteen (14) days from the original meeting date.

7.2.6. Decisions at Governing Body Meetings shall be made by a simple majority of the Trustees present and voting. In the event of an equality of votes, the Chairperson shall have a casting vote.

7.2.7. In cases requiring urgent action, the Chairperson may, in consultation with the Secretary, convene an emergency Governing Body Meeting by giving not less than forty-eight (48) hours' notice to all Trustees.

7.2.8. The Secretary shall prepare and maintain accurate minutes of every Governing Body Meeting. The minutes shall be confirmed at the next Governing Body Meeting and signed by the Chairperson and the Secretary as a true record of the proceedings.

7.2.9. A resolution approved in writing or by electronic means by a majority of the Trustees shall have the same force and effect as a resolution passed at a duly convened Governing Body Meeting, provided that such resolution is entered into the minutes of the next Governing Body Meeting.

8. FINANCIAL ACCOUNTABILITY

Non-Distribution Clause: The income and property of the Organization shall not be distributed, directly or indirectly, to any person, except as reimbursement for reasonable expenses incurred or as fair compensation for professional services rendered to the Organization, and shall be applied solely towards the promotion of the Organization's objects.

8.1. Assets Safeguarding

8.1.1. Trustees, members of the Governing Body or Management, employees, volunteers or any other person shall have no personal ownership or claim over the assets of the Organization by virtue of their office, position or association with the Organization.

8.1.2. All assets of the Organization shall be used solely for the advancement of its public benefit purposes.

8.2. Audits

8.2.1. The Organization shall prepare audited financial statements annually and submit them to the Public Benefit Organizations Regulatory Authority within six (6) months after the end of each financial year.

8.2.2. The external auditor shall be appointed by the Governing Body. No member of the Governing Body or Management shall be eligible for appointment as the external auditor.

8.2.3. The auditor shall have unrestricted access to the Organization's financial records, books of account and all information necessary to perform the audit. Upon completion of the audit, the auditor shall prepare a report confirming whether the financial statements present a true and fair view of the financial position of the Organization and submit the report to the Governing Body.

8.2.4. The statement of financial position shall be signed by the Chairperson and the Treasurer, or by any two (2) authorized members of the Governing Body, before the audited financial statements are approved by the Governing Body.

8.2.5. The Organization shall make available its books of account, financial records and other statutory records for inspection by an authorized officer of the Public Benefit Organizations Regulatory Authority upon not less than seven (7) days' written notice or as otherwise provided by law.

8.3. Financial Year

The financial year of the Organization shall commence on 1st July and end on 30th June of the following year.

8.4. Income and Economic Activity

8.4.1. The Organization may engage in income-generating activities in accordance with Section 65 of the Public Benefit Organizations Act, provided that all income generated is applied solely towards advancing the Organization's public benefit purposes.

8.4.2. The Organization shall apply all its income and property exclusively towards the achievement of its objectives, and all such income shall be properly accounted for in its audited financial statements.

8.5. Banking

8.5.1. The Organization's financial transactions shall be conducted through one or more bank accounts opened in the name of the Organization and operated in accordance with financial policies approved by the Governing Body.

8.5.2. All withdrawals, electronic transfers, payments and other transactions from the Organization's bank accounts shall require authorization by at least two (2) signatories approved by the Governing Body, in accordance with the Organization's Financial Policy.

ARTICLE 9. AMENDMENTS

9.1. Amendments to this Constitution

The Organization may, by a Special Resolution passed by the Governing Body at a duly convened Governing Body Meeting, alter, amend, modify or repeal this Constitution, adopt a new Constitution, or change the name of the Organization, provided that no such alteration, amendment or modification shall impair or prejudice the effectiveness of the prohibition against the distribution of the Organization's income, property or assets for private benefit, except as permitted by this Constitution and the Public Benefit Organizations Act.

9.2. By-Laws (Section 8(6) of the Public Benefit Organizations Act)

9.2.1. The Governing Body may make by-laws, rules and regulations, and may amend or rescind any such by-laws, rules or regulations from time to time, provided that they are not inconsistent with this Constitution or the Public Benefit Organizations Act.

9.2.2. Such by-laws, rules and regulations shall, in the opinion of the Governing Body, be necessary or desirable for the proper governance, control, administration and management of the Organization's operations, finances, programmes, affairs, interests, assets and property, and for defining the duties, obligations and responsibilities of the Trustees, Management, committees, employees, volunteers and other persons acting on behalf of the Organization, including the assignment of administrative portfolios and additional responsibilities among Trustees, provided that such assignments shall not create constitutional offices or alter the composition of the Governing Body established under this Constitution.

9.2.3. All by-laws, rules and regulations made under this Article shall be approved by resolution of the Governing Body, recorded in the minutes of the relevant Governing Body Meeting, and shall take effect on the date of approval or on such later date as may be specified in the resolution.

ARTICLE 10. DISSOLUTION OR WINDING UP

10.1. Dissolution or Winding Up

The Organization shall not be dissolved or wound up except by a Special Resolution passed by the Governing Body at a duly convened Governing Body Meeting and with the prior written approval of the Public Benefit Organizations Regulatory Authority, where required by law.

10.1.1. The quorum for the meeting considering the dissolution or winding up of the Organization shall be not less than two-thirds (2/3) of all Trustees. If the required quorum is not attained, the proposal shall be deferred to another Governing Body Meeting to be held not less than thirty (30) days after the original meeting.

10.1.2. Notice of the meeting shall be given to all Trustees at least fourteen (14) days before the date of the meeting, together with the proposed resolution and reasons for the proposed dissolution or winding up. No dissolution or winding up shall take effect without compliance with the Public Benefit Organizations Act and the written approval of the Public Benefit Organizations Regulatory Authority where such approval is required.

10.2. Distribution of Assets upon Dissolution

Upon the dissolution, winding up or deregistration of the Organization, and after satisfaction of all lawful debts and liabilities, the remaining assets of the Organization shall be transferred to one or more Public Benefit Organizations registered in Kenya with similar public benefit objectives, and shall not be distributed to any Trustee, employee, volunteer or any private individual.

10.2.1. Where the dissolution is voluntary, the Governing Body shall pass a resolution identifying the Public Benefit Organization or Organizations with similar objectives to receive the remaining assets and shall submit such resolution to the Public Benefit Organizations Regulatory Authority for approval in accordance with the Act.

10.2.2. Where the Governing Body fails to identify a suitable recipient Organization, or where the proposed transfer is not approved, the Public Benefit Organizations Regulatory Authority shall determine the appropriate recipient in accordance with the Public Benefit Organizations Act.

10.2.3. Upon deregistration, the Organization shall not dispose of, transfer or otherwise deal with its assets without the prior written approval of the Public Benefit Organizations Regulatory Authority where such approval is required under the Act.