

Public Benefits Organizations (PBO) Bill, 2012

Quest for an Enabling Environment for Public Benefit Organisations in Kenya

CSO Reference Group and the Draft Public Benefits Organisations (PBO) Bill

Several Civil Society Organizations (CSOs) in Kenya, under the umbrella of the **CSO Reference Group**, have been spearheading a campaign to mobilize CSOs to participate in the development of a new enabling legal, regulatory and institutional framework for CSOs in Kenya. This process has led to the development of an all inclusive Bill for CSOs engaged in public benefits activities, the **Public Benefits Organisations (PBO) Bill, 2012**.

A new enabling legal environment is essential in ensuring good governance by the CSOs on the one hand, while protecting legitimate civil society activity on the other. It provides a pertinent framework for the engagement of CSOs in the implementation of the new constitution.

The need for a new legislation for CSOs

The bills of rights and the principle of the freedom of association as enshrined in the constitution allows all Kenyans to establish associations, including civil society organizations (CSOs), without necessarily registering them. Chapter 4 of the Constitution provides for the rights and fundamental freedoms for each and every individual. Article 19(1) States that ***“The Bill of Rights is an integral part of Kenya’s democratic state and is a framework for social, economic and cultural policies”***. Article 36 provides for the freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

While CSOs are diverse in nature, there are also many registration and regulatory regimes for CSOs in Kenya, making it difficult for effective legal and statutory compliance and accountability for CSOs.

The various laws including the NGO Coordination Act of 1990, the Companies Act Cap 486 (for Companies Limited by Guarantee), Societies Act CAP 108, Trustee Perpetual Succession Act CAP 164, and Trustees Act CAP 167 have been unable to adequately accommodate the diverse spectrum of the civil society organizations.

Consequently, there exist gaps in the current legal and regulatory framework including:

- Multiple and overlapping, legal and regulatory regimes presents difficulties for those seeking a harmonized reporting framework;
- Difficulties in monitoring compliance and accountability by CSOs;
- The current CSO laws are centralised in Nairobi and presents challenges to the spirit of devolution as enshrined in the new constitution;
- Inadequate mechanisms and processes for self regulation for CSOs in Kenya;

- The current laws for CSOs do not explicitly address leadership and integrity issues as provided for in the Constitution;
- Absence of an independent body to provide checks and balances in cases where the self-regulatory mechanism has failed;
- Absence of complaints and dispute resolution mechanism for CSOs and their members;
- Lack of a general framework of principles for collaboration between the government and CSOs.

The Government recognized these weaknesses through the Sessional Paper No. 1 of 2006 which states that the existing fragmented and uncoordinated legal and institutional framework gives CSOs multiple avenues for registration. The Sessional Paper recommends harmonization of the overlapping legislative Acts through a comprehensive review of legislation for CSOs in Kenya.

Consultation and Drafting Process

The **CSO Reference Group** conducted extensive consultations through national CSO leaders' consultation fora, regional CSO Leaders' consultations workshops and various thematic meetings.

The drafting of the PBO Bill went through a professional process involving research on the nature of civil society and the history of CSO legislation in Kenya, comparative studies on other global legislations and new trends of international best practice, development of guiding principles as well as the production and refinement of various drafts leading to the final draft Bill.

What is the Public Benefit Organizations (PBO) Bill?

This is a new Bill to provide for the enactment by Parliament of a new Act for the formations, operations and growth of Public Benefits Organizations (PBOs); to establish a regulatory and institutional framework within which Public Benefits Organizations can conduct their affairs and for such other connected purposes.

Goal

The **Public Benefits Organizations (PBO) Bill, 2012** seeks to achieve a new legal, regulatory and institutional framework for Public Benefits Organisations (PBOs) in Kenya.

Objectives:

- To facilitate the formation and growth of public benefit organisations (PBOs) in order to strengthen civil society, promote social welfare and improve the conditions and quality of life for the people of Kenya;

- To encourage public benefit organizations to maintain high standards of governance and management;
- To establish an effective regulatory and institutional framework for PBOs;
- To Promote compliance by Public Benefit Organizations with legal and statutory obligations through exercising effective control and management over the administration of their activities and funding;
- To promote a spirit of co-operation and shared responsibility within government and among donors and other interested persons in their dealings with Public Benefit Organisations.

Principles

1. Strong Public Benefits Organizations Sector promoting social welfare and improving the conditions and quality of life for the people of Kenya;
2. Adherence to and promotion of the values of the constitution of Kenya within the Public Benefits Organizations Sector;
3. High standards of governance, transparency and accountability by Public Benefits Organizations;
4. Enhancing co-operation between PBOs, Government, Private Sectors and Development Partners;
5. Statutory and legal compliance by Public Benefit Organizations.

Key Highlights of the PBO Bill

- **Protection of the freedom of association:** The draft bill is in line with the Spirit of Article 36 of the constitution which guarantees for the freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. The enactment into law and implementation of a **Public Benefits Organisations (PBO) Act** will effectively contribute towards realization of these rights;
- **Basis for the existence of a variety of types of Civil Society Organizations (CSOs):** It provides for the inclusion of all types and forms of CSOs doing public benefit work under one single Act- the **Public Benefit Organisations (PBO) Act**;
- **Framework for collaboration between Government and PBOs:** Section 25(3) of the proposed bill provides an institutional framework for principled partnership between Government and PBOs at all levels;
- **Voluntary Self-regulation by PBOs:** Allows the Public Benefit Organisations to determine standards, certifications and adherence to professional code of conduct;
- **Complaints and Redress Mechanism:** Part VI provides for the establishment of an Independent Disputes Tribunal;
- **Internal Control Mechanisms for PBOs:** Prescribes minimum provisions to be included in the governing documents of Public Benefit Organisations;

- **Leadership and Integrity:** It advances and demands good leadership and accountability from PBOs in line with the spirit of Chapter Six of the new constitution on Leadership and Integrity;
- **Basic Financial Transparency and Reporting requirements:** Sections 21-24 provides for financial transparency and reporting by PBOs;
- **Clear Reporting and Compliance requirements:** The draft PBO bill provides the basis for harmonized reporting for all forms of PBOs;
- **Establishment of an Independent PBO Regulatory Authority:** Sections 25-27 outlines a rigorous process for the selection of members of the governing body of the PBO Commission in line with the provisions of the constitution;
- **Registration and Regulation of PBOs at the county level:** It provides for easier registration and regulation of PBOs at all levels.

Participating Organisations

Kituo cha Sheria, Akiba Uhaki, Constitution & Reforms Education Consortium (CRECO), Viwango, Peace & Development Network Trust (PeaceNet), Africa Youth Trust, URAIA, ICJ-Kenya, Health NGO Network-HENNET, Inter-Religious Council of Kenya (IRCK), International Institute for Legislative Affairs (ILA), ACT (formerly Pact Kenya), National CBO Council, Children Legal Action Network (CLAN), East African Association of Grant Makers (EAAG), Amref Kenya, Oxfam GB, African Network for the Prevention and Protection of Child Abuse and Neglect (ANPPCAN), Plan International, Action Aid International Kenya (AAIK), Pambazuko Foundation, African Community Development Media (ACDM), Aga Khan Foundation (AKF), Diakonia Sweden –Kenya Country Program, International Institute of Rural Reconstruction (IIRR) and Poverty Eradication Network (PEN).

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