



**NORTH RIFT REGIONAL CSO LEADERS MEETING  
ON**

**THE PUBLIC BENEFIT ORGANISATIONS ACT 2013**

**held at**

**CICADA HOTEL ELDORET**

**30<sup>th</sup> July 2013**

**Facilitated by Thomas Kirongo; assisted by Anne Tek**

## 1.0 Introduction

This is a report of the North Rift regional CSO Leaders Meeting on the Public Benefit Organizations Act 2013 held at CICADA Hotel, Eldoret. The meeting was organised by the CSO Reference Group and aimed at sharing the content of the PBO Act with the regional leaders and for them to give feedback on the areas they deem need amendments and the development of appropriate rules and regulations. The meeting was attended by 43 CSO leaders.

## 2.0 Background

Several national and international civil society organizations in Kenya, under the umbrella of the **CSO Reference Group**, have been providing leadership spearheaded a campaign for development of a new legal, regulatory and institutional framework for CSOs in Kenya. The process, which started in 2009, has led to the **Public Benefits Organisations (PBO) Act 2013**, which seeks to ensure a new and enabling environment for Civil Society Organisations (CSOs) in Kenya. The **PBO Act** will repeal the current NGOs Co-ordination Act no. 19 of 1990.

## 3.0 Workshop Overview

This Eldoret workshop was the sixth meeting. Other regional meeting have been held in Nakuru (Central Rift), Kisumu (North Nyanza) , Mombasa (Coast Region), Nyeri (Central Kenya) and Kakamega (Western Region). Meetings for other regions will be held as the funds are availed by development partners.

The meeting started off with a prayer from one of the participants, followed by introductions of those present. The facilitators welcomed all the participants to the Eldoret meeting while thanking them for the support they continue to extend to this important initiative.

### 3.1 Participants Expectations

- Happy that finally the law has come to fruition and look forward to its effective implementation
- Participate on the implementation of the law
- Understand the implications of the law
- How to share issues in the law with grassroots communities
- Network with other civil society organizations
- Collectively look for the resources to develop the society
- Learn about the law and share with others
- Share experiences on legislation with others

### 3.2 Meeting Objectives

- To educate the regional CSO leaders on the PBO Act
- To clarify misrepresented issues on the PBO Act

- To discuss key areas of the PBO Act that need development of rules and regulations
- To discuss areas of amendments to the ACT

#### **4.0 BACKGROUND AND CONTEXT OF THE PUBLIC BENEFITS ORGANISATIONS ACT 2013**

The facilitators took the participants through the background of the PBO Act process including: Major Challenges with current CSOs Regulations, Context, and the consultation process.

##### **4.1 Major Challenges with current CSOs Regulations**

The facilitator note that there were a number of challenges inhibited by the current legislation for CSOs including: absence of a harmonized regulatory framework for organisation undertaing public benefit work (Public Benefit Organisations –PBOs), inadequate mechanisms and processes for self regulation by PBOs, lack of an effective complaints and dispute resolution mechanism for PBOs, poor leadership and integrity challenges and an Ad hoc manner of collaboration between the government and PBOs.

##### **4.2 Process of CSOs Involvement and Participation**

- September 2009 -National Stakeholders Workshop
- October 2009-Formation of the CSO Reference Group and Secretariat
- General Guiding Principles
- PBO Bills ( Various Draft s) – Final Draft December 2012
- Private Members Bill
- Mobilization and Consultation of CSOs (2010-2012)
- Engagement of KLRC, Ministry of National Heritage and Culture and MPs
- June 2012- Joint working Group (CSO Reference Group and NGO Coordination Board
- Aug 2012- Stakeholders Retreat
- Sept – Dec 2012- Final amendments and Final PBO Bill Draft submitted to and passed by the National Assembly.

##### **4.3 Objectives of the new law**

- Provide conducive environment for the growth and operation of PBOs.
- Establish an effective legal, regulatory and institutional framework for PBOs
- Promote a re-birth of values within the sector
- Provide a legal basis for PBOs to engage in commercial activity.
- Advance effective Self Regulation
- Establish a complaints and redress mechanism

#### **5.0 Major Issues addressed by the 2013 PBO Act and implications on the NGO sector**

##### **Implications of the PBO Act**

The PBO Act has the following implications.

- Proper Definition of PBOs
- Registration of PBOs and Public Benefit Status
- Incentives for Registration

- Independence of the PBO Act Regulatory Authority
- Public Policy, Participation by PBOs
- Income and Economic Activity
- Time limits on processing of registration
- Safety of assets on deregistration

The meeting went further to discuss each implication with reference to the PBO Act and its implications as shown below;

### 5.1 Definition of Public Benefit Organisation

The PBO Act clearly defines Public Benefit Organisations (PBOs) as “Public Benefit Organisation” defined in Section 5 of the Act as “a voluntary membership or non-membership group of individuals or organisations, which is autonomous, non partisan, non profit making and which is:-

- (a) organized and operated locally, nationally or internationally;
- (b) engages in public benefit activities in any of the areas set out in the Sixth Schedule (see attachment); and (c) is registered as such by the Authority.”

The Sixth schedule clearly stipulates the areas in which PBOs can work including: Legal Aid; Agriculture; Children; Culture, Disability; Energy; Education, Environment and Conservation, Gender; Governance, Poverty Eradication; Health; Housing and Settlement; Human Rights; HIV/AIDS ; Information; Informal Sector, Old Age, Peace Building; Population and Reproductive Health, Refugees; Disaster Prevention, Preparedness and Mitigation; Relief; Pastrolism and Marginalized Communities; Sports; Water and Sanitation; Animal Welfare and Youth.

He advised the participants to check if they are covered in the areas their organisations are working in.

### 5.2 Registration of PBOs and bestowing of Public Benefits

Registration of PBOs and bestowing of Public Benefit Status is covered under section 6 to 19 of the PBO Act. Some of the important sections covered are;

- It is mandatory for a PBO to be registered under the Act in order for it to enjoy the benefits set out in the Act and more particularly in the Second Schedule **(Section 6(1))**.
- No PBO can be registered under the Act while its registration under another law subsists **(Section 6(2))**. However, registration under the Act supersedes registration under any other law and the prior registration is deemed invalid **(Section 6(3) and (4))**.
- No organization shall purport to be a PBO unless registered under the Act or been recognized as such by the Authority **(Section 7)**.
- An international NGO may be registered by simply furnishing proof to the Authority that it is a legal entity in another country and supplying the name and address of an authorized agent in Kenya **(Section 8(3) and 8(4)(f))**.

### 5.3 Incentives of registering under the PBO Act

Incentives to PBOs; the Second schedule lists the benefits of registration under the PBO Act 2013 set out in this Schedule, namely:-

(a) Exemption from

- income tax received from membership subscription, donations and grants;
- income tax from the PBOs income generating activities if the income is wholly used to support the purposes of which the PBO was established; tax on interest and dividends earned on assets on the sale of assets:- - stamp duty; and - court fees.

(b) Preferential treatment under the VAT and customs duties legislation in relation to the importation of goods and services.

(c) Incentives for donations by legal and natural persons.

(d) Employment tax preferences.

(e) Special tax incentives for donations to form endowments, prudent investment policies, etc.

(f) Indirect government financing e.g. budget subsidies, grants for specific purposes and contracts to perform certain work.

(g) Preferential treatment in public procurement procedures.

(h) Provision of information to PBOs.

(i) Access to training offered by Government institutions.

### 5.4 Transitional provisions

These are spelt out in the **Fifth Schedule** this includes transition of the Authority, Federation and NGOs. All NGOs currently registered under the NGO Act will transit to become PBOs and will have one year to re registration under the PBO Act 2013 (Section 5 (1-2); PBOs will not have to pay for re-registration.

### 5.5 International Non-Governmental Organisations

Definition: “International Non-Governmental Organisations” – “A *non-governmental organisation with its original registration being in a country other than Kenya and operating in Kenya under a certificate of registration issued under Section 10 of the Act*” (**Article 2**).

**Article 11** gives more information on INGOs.

(1) An organization which is registered outside Kenya and which intends to operate in Kenya shall apply to the Authority for a certificate to operate in Kenya.

(2) The Authority shall take any of the following actions on an application made under subsection (1) –

(a) exempt the organization from registration, and instead grant that organization a permit to operate in Kenya, if that organization does not intend to directly implement any activities or programmes in Kenya or operate from Kenya to implement any activities or programmes in another country;

(b) require the organization to apply for registration as an international organization, if that organization intends to directly implement any activities or programmes in Kenya or operate from Kenya to implement any activities or programmes in another country.

(3) The Authority shall not exempt an organization from registration under subsection (2)(a) if that organization intends to –

(a) engage in direct implementation of any activity or program in Kenya or operate from Kenya to implement any activities or programs in another country;

(b) raise any subscriptions or engage in any other form of raising of funds in Kenya.

(4) The Authority shall require an organization that applies for registration pursuant to subsection (2) (b) to undergo the same registration procedures, and satisfy such application requirements, as may be provided for in the regulations.

(5) An organization registered pursuant to an application made under subsection (2)(b) shall be required by the Authority to – (a) have at least one third of its directors who are Kenyan citizens and who are resident in Kenya; and (b) maintain an office in Kenya.

(6) Regulations shall provide for the regulation of organizations issued with a permit to operate in Kenya under subsection (2) (a).

## **6.0 GROUP EXERCISE ON AREAS OF AMENDMENTS AND DEVELOPMENT OF RULES AND REGULATIONS ON PUBLIC BENEFITS ORGANISATIONS ACT 2013**

In this session the participants were asked to discuss the following in three groups;

- 1. Areas of amendments**
- 2. Recommendations for rules and regulation**
- 3. Any other comments on the Process of the PBO Act and Lessons learnt**

### **6.1 Issues and Question from plenary**

- Let conducive environment be the core objective of the law
- Need to appreciate the document.
- Need for an organization that takes care of the consumers? There is consumer association of Kenya
- *What happened to the second bill that was sent to parliament?:* The second bill, was the NGO Bill 2012. The PBO Bill was accepted ahead of the NGO Bill which was never presented to parliament.
- *What made the process successful?* Mapping out stakeholders and using friends to drive and push for the process
- *Expound on the word voluntarily?:* You can belong to any forum as long as it is voluntary which will eventually become a member of the National federation of PBOs
- *Will the registration procedures remain the same?:* No. Organisations will have to reregister again to meet the new requirements
- *Why can't we push for the amendments in parliament now?* The reference Group is working on the best time to push for the amendments in parliament
- *Why was the director's term extended?* This is a clause that is not as captured in Parliamentary proceedings (Hansard). The Reference Group is following up with the Attorney General office on this and other clauses to ensure that the Act reflects the Hansard.

- *What is the difference between NGOS and PBOs?* With the new Law, NGOs will change to PBOs.
- *Are assets of NGOs supposed to be registered afresh?* No
- *How does the law protect CSOs from exploitation?* The new law treats all PBOs registered under the law in a similar manner.
- *What happens to the small CBOS which cannot register as NGOs because they cannot form oversight Boards?* They will need to work on these issues to meet the registration criteria for the new law. However, the freedom of association in chapter 36 of the constitution protects the existence of CBOs and other non-legally registered groups or movements.

## 6.2 Areas for amendments

- The tribunal needs to be given the powers to summon e.g. there is no provision on what happens when you don't show up for sermons or in case of arbitration what will happen.
- Need to be provided for the offences against e.g. those that form PBOs for fraudulent dealing
- Amend the composition of the board to have most of the members from the PBOs
- The government to put a certain percentage of total government for PBOs
- Registrations should be at the county level

## 6.3 Areas for Rules and Regulations

- All the government representatives should be ex-officio in the authority to show their neutral.
- Need to be clear on registration of NGOs it should be automatic
- Indicate the registration fees
- Need for an online registration
- Need for county offices for PBO Authority
- New federation to adopt Viwango Standard for regulations
- Penalty for offenders should be stringent Kshs 300000 is little
- Need for clarity on the collaboration between the government and civil society
- Strict timelines on rules and regulations e.g. time of appeal
- Have a county database that reflect the national level
- Need for a clear structure for the National Federation of PBOs from the county to the national level to have clear representation

## 7.0 General Comments

- National PBOs should be form forums at the county level
- Need for regular training for the PBOs at county by the national county
- Need for frequent awareness of PBO Legislation
- The law does not provide for the independence of the PBO Regulatory Authority as required by the guiding principles as the cabinet secretary has a vey big influence on the appointment of most of the members of the Authority.

## 8.0 Way forward

- Participants to send feedback on areas for aments and the development of rules and regulations through email. They should also interact with the process through twitter and face book.

- Participants to assist in advocacy and policy influencing for the proper implementation of the PBO act 2013.
- Formation of North Rift PBO forum.
- The new Forum to make and update database of all PBOs in the North Rift

### List of Participants

No.	Name	Organization	Email	Telephone
1	Eliud K Suge	Bishop Kigen International	<a href="mailto:eliudsuge@gmail.com">eliudsuge@gmail.com</a>	0722 495 698
2	Florence J Kipyas	Keiyo South District Small Scale Farmers Forum	<a href="mailto:florencekipyas@yahoo.com">florencekipyas@yahoo.com</a>	0725 417 545
3	Lilian Kiptoo	KERUWOSA	<a href="mailto:liliankiptoo80@yahoo.com">liliankiptoo80@yahoo.com</a>	0726 659 879
4	Philip Barno	ELDOICORE	<a href="mailto:pkbarno@yahoo.com">pkbarno@yahoo.com</a>	0724 849 999
5	Samuel K Songok	Chebarus Chengigei	<a href="mailto:samso@yahoo.com">samso@yahoo.com</a>	0725 664 218
6	Mary Njoki	DPC Wareng	<a href="mailto:warendpc@yahoo.com">warendpc@yahoo.com</a>	0712 549 353
7	Kennedy O Mwabe	Kaposi Sarcoma KS	<a href="mailto:kennedymwabe@yahoo.com">kennedymwabe@yahoo.com</a>	0721 643 936
8	Rachel Miami	Rachrose CBO	<a href="mailto:sambulem@yahoo.com">sambulem@yahoo.com</a>	0722 232 392
9	John Bunyasi	North Rift Murinet	<a href="mailto:tjohn.bunyasi@yahoo.com">tjohn.bunyasi@yahoo.com</a>	0728 997 714
10	Martin Yano	Centre for Child Education & legal Aid (CECELA)	<a href="mailto:cenfoc@yahoo.com">cenfoc@yahoo.com</a>	0723 174 402
11	Simon Ngige	Marithiano	<a href="mailto:simonngine@yahoo.com">simonngine@yahoo.com</a>	0712 415 588
12	Richard Cheptorus	Mwanga Foundation	<a href="mailto:cheptorus@yahoo.com">cheptorus@yahoo.com</a>	0728 076 546
13	Sammy W Chemwey	Rehema Kenya Dev Ent. Organization	<a href="mailto:rehemakenya@gmail.com">rehemakenya@gmail.com</a>	0722 402 714
14	Richard Kipseret	Centre for human rights and Governance	<a href="mailto:chrigenya@yahoo.com">chrigenya@yahoo.com</a>	0723 204 650
15	Edmond Chepkwoy	SUSURWA		0717 708 383
16	Agnes Akinyi	Nothe R Voices		0728 342 240
17	Biwot Evans	BERUR Foundation	<a href="mailto:biwott@yahoo.com">biwott@yahoo.com</a>	0725 346 785
18	Philip K Mury	KETRAN	<a href="mailto:philipk.murey@yahoo.com">philipk.murey@yahoo.com</a>	0721 823 732
19	Joseph Kipwot	KABURWO		0722 244 106
20	Biwott Hellen	KET NETWORK	<a href="mailto:kenaket@gmail.com">kenaket@gmail.com</a>	0721 155 911

21	Florence Menye	WEDA	<a href="mailto:florencemynye@yahoo.com">florencemynye@yahoo.com</a>	0720 695 882
22	Tilem K Luke	EYEIN	<a href="mailto:tkimutai@yahoo.com">tkimutai@yahoo.com</a>	0729 490 670
23	Onesmus Opondo	Golden Age Group		0718 863 693
24	Nelson Kuria	Marithiano Youth	<a href="mailto:marithiano@yahoo.com">marithiano@yahoo.com</a>	0720 955 736
25	Emily Rotich	RWE BASE	<a href="mailto:ekobiloj.ke@gmail.com">ekobiloj.ke@gmail.com</a>	0722 420 482
26	William Serem	COMFA	<a href="mailto:wilsernet@yahoo.com">wilsernet@yahoo.com</a>	0720 320 041
27	Emily Cherop	CHRD	<a href="mailto:emilio8sero@yahoo.com">emilio8sero@yahoo.com</a>	0710 938 399
28	Anna Bungei	MUWO	<a href="mailto:chepkugatann@yahoo.com">chepkugatann@yahoo.com</a>	0725 225 455
29	Moses Mwangi	Empty Vessel	<a href="mailto:mosesmwangi@gmail.com">mosesmwangi@gmail.com</a>	0713 242 931
30	Paul Kiprotich	Catholic Diocese of Eldoret Youth Department	<a href="mailto:kiprotich49@yahoo.com">kiprotich49@yahoo.com</a>	0721 351 539
31	Obadiah Kirati	ELASVIT	<a href="mailto:obadiahkirati@yahoo.com">obadiahkirati@yahoo.com</a>	0725 221 556
32	Shadrack Koech	Kapseret Community Forest Association (KCFA)		0726 117 040
33	Emmanuel Kemboi	Kapseret Community Forest Association (KCFA)	<a href="mailto:emmanuelkemboi@yahoo.com">emmanuelkemboi@yahoo.com</a>	0726 117 244
34	Eric Githua	Christian Legal Education Aid and Research (LEAR)	<a href="mailto:kiare_eric@yahoo.com">kiare_eric@yahoo.com</a>	0714 428 008
35	Milkah Toroitich	Jumuiya Women Group	<a href="mailto:jumuiyawomengroup@yahoo.com">jumuiyawomengroup@yahoo.com</a>	0723 329 530
36	Monica Jepkoech	Jumuiya Women Group	<a href="mailto:jumuiyawomengroup@yahoo.com">jumuiyawomengroup@yahoo.com</a>	0704 870 647
37	David Kendagor	KEDA	<a href="mailto:davidkendagor@yahoo.com">davidkendagor@yahoo.com</a>	0720 926 555
38	Daniel K Yator	FONE	<a href="mailto:danyator56@yahoo.com">danyator56@yahoo.com</a>	0721 293 182
39	Rose Chemei	RACHROSE CBO	<a href="mailto:hilrose@gmail.com">hilrose@gmail.com</a>	0722 449 291
40	Julius K Sawe	Greentech Africa Solution	<a href="mailto:greentechafrika30@gmail.com">greentechafrika30@gmail.com</a>	0751 201 469
41	Anne Tek	Poverty Eradication Network	<a href="mailto:annet@penkenya.org">annet@penkenya.org</a>	0723 651 951
42	Sharon Jepkemoi	Sosurwo Fonds Kenya	<a href="mailto:sharonhamani@yahoo.com">sharonhamani@yahoo.com</a>	0721 979 484
43	Thomas Kirongo	Poverty Eradication Network	<a href="mailto:info@penkenya.org">info@penkenya.org</a>	0721 636 026

