



**NORTH NYANZA REGIONAL CSO LEADERS MEETING
ON**

THE PUBLIC BENEFIT ORGANISATIONS ACT 2013

Held at

THE VIC HOTEL KISUMU

18th June 2013

Facilitated by Faith Kisinga and Anne Tek

1.0 Introduction

This is a report of the North Nyanza regional CSO Leaders Meeting on the Public Benefit Organizations Act 2013 held at The Vic Hotel, Kisumu. 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 26 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 North Nyanza workshop was the second meeting. The first meeting was held in Nakuru (Central Rift), others that have been planned are: Mombasa (Coast Region), Nyeri (Central Kenya) and Kakamega (Western Region).

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 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 needs development of rules and regulations

4.0 Background and Context of The Public Benefits Organisations Act 2013

The facilitator 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

- *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

- Need to devolve the PBO Authority

6.3 Areas for Rules and Regulations

Establishment

- Must be voluntary-free platform for organisations to join
 - Rotational conveners at regional level
 - Elective offices
 - Need to set up county and sub-county forums the same forums will support
 - Need for an inventory of registered members by location and thematic areas
 - County Chapters Office bearers
 - Chair
 - Vice Chair
 - Secretary
 - Treasury
 - At national level
 - National convention council which meets yearly
 - National governing council that meets quarterly
 - Executive committee that meets monthly as determined by members
 - Need for an inventory of registered CSO members by location and thematic areas
- #### **Role of the Federations**
- Advance interests of the PBOs
 - Ensure the quality rendered by CSOs are of good quality
 - Lobby for support & raising resources for CSOs
 - Ensure PBOs operate in a relatively favourable regulatory policy framework
 - Ensure equitable distribution of resources

- Federation to promote & protect Vulnerable CSOs from state machinery

8.0 Way forward

- Share presentations with the networks
- Reach out to more CSO networks in the County
- Create more awareness of the PBO Act with varies networks and constituents
- Formation of North Nyanza PBO forum.

Forum Committee:

- Wilfred Macdonald-Siaya County-0735030961
- Margaret Amol-Kisumu County-0722269059
- Peter Kochiel-Kisumu County-0725615964
- Amina Omumbo-Kisumu County-0720661008
- Ochola Jacob-Kisumu County-0702703471
- Rosmary Nyaswa-Siaya County-0725891304
- Steven Obiri-Kisii County-0723324998

Appendix I Program

Time	Activity	Facilitator
8.30 am-9.30am	Arrivals and Registration	Anne Tek
9.00 am-9.30am	Welcome and Introductions	Anne Tek
9.30am – 10.30am	Background and Context of the Public Benefit Organizations Act 2013	Faith Kisinga
10.30am -11.00am	Tea Break	
11.00am – 11.45am	Highlights of the Public Benefit Organizations Act 2013	Faith Kisinga
11.45am-1.00pm	Question and Answer Plenary	Facilitation Team
1.00pm-2.00pm	Lunch	
2.00pm-2.30pm	Key areas on development of rules and regulations on Public Benefit Organizations Act 2013	Faith Kisinga
2.30pm-3.00pm	Group discussions	Facilitation Team
3.00pm-3.30pm	Presentation and way forward	Anne Tek
Tea and Departure		

Appendix II.List of Participants

Nyanza Kenya CSO Leaders-Tuesday 18th June 2013 at Vic Hotel, Kisumu from 0800-1530hrs

No.	Name	Organization	Email	Telephone
1	Douglas Onyango	Tinada Youth Organization	tinadayouth@yahoo.com	0724 068 799
2	Thomas Ogutu	Shepherds Rock Community Developmet	srcdorg@gmail.com	0727 752 223
3	Erick Okioma	Victory Post Test Group	victoryposttest@yahoo.com erickokiona2yahoo.com	0711 642 433
4	Paul Okoth	Family Life Programme	okothamara@yahoo.com	0710 310 256
5	Peter Kochiel	Informak Sector Dev Organization	kochielpeter@yahoo.com	0725 615 964
6	Rosemary Nyaswa	Centre for Women Network	nyaswarosemary@yahoo.com	0725 891 304
7	Hesbon J Otieno	Local Initive Dev agency (LIDA)	otienohesbonj@maol.com lindakenyaorg@yahoo.com	
8	Samuel Otieno	Konyruok Dev Initiative (KODI)	kodinitiative@yahoo.com	0720 417 202
9	Rosemary A Otieno	KADINGA CBO		0729 546 753
10	Amina Omumbo	ALTIAQWA CBO	al.taqwa@yahoo.com	0720 661 008
11	Pamela A Omondi	Umbrella W/Orphans		0728 095 396
12	Pete Aduda	Childfund - Kenya	paduda@kenya.childfund.org adudap@yahoo.com	
13	Charlse Ogoda	UCRC	charlse@ugunja.org	0721 963 011
14	Jane Akinyi	Kijana Africa		0729 267 630
15	Margaret Amol	The Grail Centre	amolmargaret@yahoo.com	0722 269 059
16	Mary Obunga	KOWIO	maryamo@gmail.com	0723 744 861
17	Stephen Obiri	Lutheran Outreach	lutheranorg@yahoo.com	0723 324 998 0733 837 849
18	Jacob Achollah	SANA International	jacbollah@saninternational.org	0702 703 471
19	Anne Celestine Ochieng	Ngere CBO		0725 690 782
20	Chris Owalla	CIAG-K Trust	owallac@ciagkenya.org info@ciagkenya.org	0716 384 135
21	Justus J Ikola	Map Initiative Progme	josef-ikola@yahoo.com	0725 991 130
22	George Ooko Okoth	Matibabu Tumaini Support Group	Matibabutumainis@yahoo.com	0723 437 347
23	Wilfred Macdonald	KESPA	mc_donaldwilly@yahoo.co.uk	0735 030 961
24	Loice Achieng Odipo	Kinda W Group		0727 512 534

25	Anne Tek	Poverty Eradication Network	annet@penkenya.org	0723 651 951
26	Faith Kisinga Gitonga	ACT!	faithkisinga@yahoo.com	0722 823 866

