

Public Benefit Organisations (PBO) Act 2013

Development of Rules and Regulations

South Coast CSO Leaders meeting

Castle Royal Hotel Mombasa

18th July 2013

Introduction

The meeting began by a round of introductions from the participants for ease of reference during the discussions. A brief introduction was given about the CSO reference Group, its origin and its mandate as a network of Civil Society Organisations.

Agenda/Objectives

The agenda and objectives of the meeting were highlighted as:

- To share the contents of the PBO Act 2013 with regional CSO leaders.
- To clarify misrepresented/contentious issues on the PBO Act 2013
- To discuss key areas that needs development of rules and regulations on the PBO Act 2013

Background and Context of the Public Benefit Organizations Act 2013

A presentation was made on the origin and context of the CSO reference group and its work as a network of CSOs. Having been formed in October 2009 following a resolution for the same at a National Stakeholders Workshop in September of 2009, the progressive steps taken by the CSO Reference Group towards discussions, formulation and tabling of PBO Bill to parliament that saw to it becoming an Act of parliament and subsequent steps towards its implementation through drafting of Rules and Regulations were discussed in the presentation. *(Presentation is attached to this report).*

Highlights of the Public Benefit Organizations Act 2013

A presentation was made on the Public Benefits Organisations Act and an analysis of its provisions section by section. This was informed by the realisation that a large number of the participants had not interacted with the Act and were therefore not aware of its provisions save for its controversial aspects highlighted in newspaper articles. *(Presentation is attached to this report).*

Question and Answer Plenary Session

Several concerns were raised by the participants in the plenary session with regard to their understanding of the Public Benefit Organisations Act.

- A concern was raised as to the place of Faith Based Organisations and Community Based Organisations in the PBO Act, in consideration of the fact that some of these CBOs and FBOs may not meet the threshold of requirements for registration under the Act.

It was clarified however that the Act does not compel all NGOs to be registered under it, for the organisations that either don't fit into its framework or are locked out by its provision may retain their current registration status, but the benefits accruing under the Act will not be available for such organisations not registered under the Act.

- Concerns were raised with respect to the fact that composition of the Board of the PBO Authority as stated in the Act was largely government officials and that there is minimal representation of the CSOs whose interest the PBO Act seeks to serve. This was highlighted and an attempt by government to control the civil society rather than regulate its functioning, and therefore against the interest of the CSO Sector.

It was noteworthy however that this may not be remedied in the Rules and Regulations but would be a key point for what would be fronted for amendment in the Act.

- It was observed that new legislation should not act retrospectively, to disrupt the functioning of the already existing CSO organisations prior to its enactment, a suggestion as therefore made for the drafting of the Rules and Regulations to allow organisations that already are registered under the repealed NGO Coordination Act and other legislation to continue operating as though registered under the PBO Act.
- A concern was also raised concerning organisations that were exempt from registration under the NGO Coordination Act and whether the same could be entrenched in the PBO Act.

Clarification was given that the Act requires all organisations, including those that were previously exempt from registration to re-register under the Act; this was in light of the fact that the PBO Act was seeking to bring all NGOs under one management and regulation without treating any specially or differently.

- A question was raised regarding the place of international Non Governmental Organisations in the PBO Act.

This was addressed by directing the individual to Sec of the Act that provides for registration of INGOs and providing the requirements for such registration.

- Another question was raised regarding NGOs that have overlapping mandates considering that the Act requires every CSO at the time of registration to clearly state its mandate and limit such mandate to the CSO's core business.

It was clarified however that as long as the CSO with several mandated in different fields declares the same at the time of registration subject to analysis and approval by the Authority prior to its registration, these would be no problem with overlapping mandated. The Act was attempting to guard against CSOs that register a specific core business but end up satisfying a different core business with the changes in the environment.

- Questions were raised over the decision to name the Act Public Benefits Organizations Act as opposed to the household name that is Non Governmental Organisations. It was observed that the change of name would cause confusion especially in terms of classification of organisations in submission of proposals for donor funding.

The rationale behind the change of name was clarified as the need to find a term that umbrella all CSOs, as organisation whose work is for the benefit of the public. It was also observed that International donor had an obligation to adjust should there be legislative changes and therefore donor funding classification and structures would have to be altered to suit the legislative changes in the CSO sector in Kenya.

- A loophole was identified in the process of review and appeal and the subsequent decision making with regard to registration as the proposed structure denies any organization aggrieved by the decision of the Authority

either at review stage of appeal to the tribunal a fair hearing prior to such determination. This was viewed as a provision working against the interest of CSOs as opposed to supporting their work.

It was clarified however that right to fair hearing is constitutional and the Constitution being the highest law of the land still authorised any such organisation to go to court under it if aggrieved by the processes under the PBO Act. The finality of the decision of the authority is therefore subject to challenging in a court of law.

- There were further concerns as to whether there were plans to devolve the PBO Authority to the country level to ensure that CSOs at the regional level and grassroots are encompassed in the process.

It was clarified that the Act was yet to be implemented and a commencement date was yet to be given. This couldn't however be addressed in the rules and regulations and therefore the suggestion to decentralise the Authority would be taken into consideration towards the implementation of the Act.

- It was further observed that following a previously meeting between the NGO Coordination Board and the Coast region CSO leaders, a fees for registration has been set at approximately 30,000/=, this was stated as too high for registration fees and not realistic especially for grassroot CBOs and FBOs that were struggling to access donor funding or that are self funded.

It was clarified that the suggested registration fees by the board was not final and a considerate figure would be fronted to the Authority for consideration.

- A suggestion was made for the entrenchment of government funding for CSOs and technical support to allow for CSOs to deliver on their mandates for the public benefit. It was clarified that the PBO Act already bestow on the government the responsibility to ensure its collaboration with CSOs, funding and inclusion in policy formulation.
- A suggestion was made for the inclusion of persons living with special needs, disabilities and persons living with albinism into the leadership of the PBO Authority.

Key areas on development of rules and regulations on Public Benefit Organizations Act 2013

A presentation was made highlighting the provisions of the PBO Act that have been contentious and the key areas that need focus in the drafting of rules and regulations. These areas were identified as:

- Clarification of the position on registration with respect to commencement, fees, renewal of registration and timelines for the same while bearing in mind CSOs currently registered under the repealed NGO Coordination Act and Trusts.
- Addressing the manner of realisation of the incentives accruing to CSOs registered under the PBO Act e.g. tax exemptions, funding by government and partnership with the government.
- Clarification of the purpose and practical functioning of the Federation and the sub committees within the Federation as outlined by the PBO Act as well as the steps to be taken towards the establishment of the Federation.
- A prescription of the rules for the appointment and nomination of members of the PBO Authority as created by the Act.

Group discussions

The participants were subdivided into groups of 5 to engage in further discussions on the PBO Act and generate recommendations that would help structure the Rules and Regulations of the Act for to serve the interests of the CSO Sector. The feedback from the group discussions were shared with the rest of the participants.

Presentations and way forward

This was a consolidation of the group discussions and all the deliberations during the sessions in the forum. These recommendations were:

- Reduction of the registration fees from the proposed 30,000 by the current NGO coordination Board to 10,000 to allow small and upcoming organisations that are struggling to raise funds to also afford the registration.
- Isolation of the provisions of the PBO Act that cannot be remedied in the Rules and Regulations and will therefore require amendments to the Act, this would allow stakeholders to design the possibilities of amendments.

Inclusion of the registration clause in the Rules and Regulations clarifying whether current registrations under the NGO Coordination Act will translate into registration under the PBO Act upon its commencement.

- Clarification in the rules as to the renewal of registration certificates, setting timelines and fines for exceeding such timelines.
- Facilitation of the Coast Region CSOs to establish a network through which the opinions and recommendations of the CSOs in the region can be gathered and circulated.
- Inclusion of Coast regional CSO leaders and organisations in the planning, activities and process of the CSO Reference Group.
- Circulation of the draft Rules and Regulations to the Coast region CSOs for review and input after it is put together.

Appendix I Program

Time	Activity	Facilitator
8.30 am-8.30am	Arrivals and Registration	Anne Tek
8.30 am-9.00am	Welcome and Introductions	Lorraine Ochiel
9.00am – 10.30am	Background and Context of the Public Benefit Organizations Act 2013	Anne Tek
10.30am -11.00am	Tea Break	
11.00am – 11.45am	Highlights of the Public Benefit Organizations Act 2013	Suba Churchill
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	Lorraine Ochiel
2.30pm-3.00pm	Group discussions	Facilitation team
3.00pm-3.30pm	Presentation and way forward	Anne Tek
Tea and Departure		

Appendix II Participants list

South Coast Kenya CSO Leaders				
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