



PUBLIC BENEFIT ORGANISATIONS (PBO) ACT 2013

Development of Rules & Regulations

Eastern CSO Leaders Meeting

Wednesday 21th August 2013

Lysak Haven Park, Machakos

1.0 Introduction

This is a report of the Eastern regional CSO Leaders Meeting on the Public Benefit Organizations Act 2013 held at The Lysak Haven Park, Machakos. 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 27 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 Eastern Kenya workshop was the eight meeting. The first meeting was held in Nakuru (Central Rift), Mombasa (Coast Region), Nyeri (Central Kenya), Kakamega (Western Region), Eldoret (North Rift), Kisumu (North Nyanza) and Isiolo(North Eastern)

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 Machakos 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.

6.0 Question and answer session

Why was the name changed from NGOs to PBOs?

It is not clear what NGOs means. PBO defines organization that work for the benefit of the public. An NGOs has a lot of ambiguity and need for clear definition

7.0 Group work

7.1PBO Act

- Sec 5 2organistions registered under companies act should be considered
- Sec 35 needs for equal representation in the government especially the minority
- The tribunal should have representation of the PBOs
- Need to cluster activities on the sixth schedule

- Need for equal representation from the government and civil society at the PBO Authority
- Sec 5 2i need for a clarification on who CBOs are
- 21 4a 9 members should be increased to 11
- Need for a clear definition of PBOs
- Need to List those we know are PBOs and not those who are not
- Need for reason for the amendments
- Need to have representatives from the disability and children in the PBO Authority
- Need a schedule on the PBO Act describing the kind of records required

8.0 Rules and regulations

8.1 Registration and exemption from registration

- Organizations name search should only take 5days
- Reg. 5 Clarify on who the 'chief officer' is
- Reg. 5 .Need clarity on the conditions in form 4
- Clarity on the process of asset transfer

8.2 Conduct and administration of organizations

- Reg. 16 1 organizations should have a physical postal and email address
- Reg. 17 amendments should take care of genuine concerns of the organization incase of changes
- Reg. 19 (2) need for deadline from the PBO Authority on responding to change of name or issuing exception certificate upon payment of fees
- Reg. 19 There should been a time frame for the changing the names and address of an organization made

8.3 Powers of inspection, etc. Of the authority and protection of assets of organisations

- Reg. 21 need a clarification on what 'all records 'means

- The regulation need to quote in the act where the penalty is
- cancelation of registration should take 90days and not 60days
- With in – typo error

8.4 Self regulation, administrative and reporting obligations

- Time frame of 90days should be given
- Founder board members should be allowed to choose to chose the
- Reg. 35 penalty for not adhering to regulations should be increase from 6months
- Periods of 12monthds 9 is months
- PBOs should not be allowed to amend their names

9.0 General Comments

-PBO Act provides clearly on how PBOs will carry out business activities unlike other registration regimes

- When carrying out income generation activities for the PBO Act .The business reflect vision and mission of the organization

- The law in Sec 67provides for the ministries responsible to work close with the CSOs therefore need for CSOs to be proactive

- Need for central coordination point for Machakos network

10.0 Way forward

- i. Need for the push of the commencement date for the PBO Act
- ii. Need to collate views on the PBO Act from the PBOs from the Eastern Kenya Counties
- iii. CSO Reference to finalize on the rules and regulations for the PBO Act

10.1 Machakos County

- Formation of CSOs network in the county
- The meeting will be on 12th September 2013 venue to be communicated
- Need for a convention for the deaf to interpret the Act
- (Kenya deaf association)Christine 0723886078

Appendix 1 Participants Expectation

- I. Network with other civil society members
- II. Understand the PBO Act
- III. Contribute amendments to the PBO Act
- IV. Need for a clear section that provides for the children
- V. To have a productive discussion
- VI. To work together with CSOs
- VII. To Understands the spirit that led to the establishment of the PBO Act
- VIII. What value that the movement from NGOs to PBOs has to the CSOs
- IX. There are so many organizations but what impact has this CSOs made
- X. Hoping the impact of the CSOs are felt in Machakos
- XI. Better networking for efficiency
- XII. To ensure that the community is empowered on opportunities that come with devolution
- XIII. Learn more on the PBO Act and disseminate the information
- XIV. Get new ideas from the forum
- XV. Apart from rebranding the name how will the PBOs work with the government to provide for the community
- XVI. Contents of the new law and the difference with the old act
- XVII. What sustainable change what space will it give a citizen participation
- XVIII. How the act will harmonize the working relations at the county and working relation with pen.

Appendix II Program

Time	Activity	Facilitator
9.00 am-9.15am	Arrivals and Registration	Mathew Mutunga
9.15 am-9.30am	Welcome and Introductions	Mary Mutuku
9.30am – 10.00am	Background and Context of the Public Benefit Organizations Act 2013	Anne Tek
10.00am-10.30am	Question and Answer Session	Facilitation Team
10.30am -11.00am	Tea Break	
11.00am – 11.45am	Highlights of the Public Benefit Organizations Act 2013	Chris Mbiti
11.45am-1.00pm	Question and Answer Session	Facilitation Team
1.00pm-2.00pm	Lunch	
2.00pm-2.30pm	Group discussions on PBO Act	Mary Mutuku/ Mathew Mutunga
2.30pm-3.00pm	Key areas on development of rules and regulations on Public Benefit Organizations Act 2013	Anne Tek
3.00pm-3.30pm	Presentation and Way Forward	Chris Mbiti
Tea and Departure		

Appendix III List of Participants

Eastern Kenya CSO Leaders-Lysak Haven Park, Machakos,				
No.	Name	Organization	Email	Telephone
1	Dennis Kioko	I Choose Life Africa	dlioko@ichooselife.or.ke	0714 688 940
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4	Peter King'aa Ngunia	Kyevaluki CBO	peterngunia@yahoo.com	0723 677 390
5	Peter Muya Matheka	Mbitha Paralegal Network	petermatheka@gmail.com	720 584 168
6	Joseph Mbithi	Mutulani Youth Group	Mutulanityouth@gmail.com	0720 753 451
7	Jacob Ngumi	Young Professionals for Development (YPD)	jacobngumi@yahoo.com	0721 695 890
8	John Mwaniki	Bidii	bidii2006@yahoo.com	0728 699 000
9	Philip Mwanisi	RISE Kenya	rise@kenya.org.ke	0716 705 915
10	Philip Kilaki	PROLINOVA	kilakiphilip@gmail.com	0726 346 812
11	Pst James Kowilu	RGC Machakos Child Sponsorship	jameskawilu@yahoo.com	0722 816 552
12	Peter Kilonzo	PDC	pkilonzo@pdcentre.org	0722 762 162
13	Sabina Kongo	Mukika - CBO	sabukongo@yahoo.com	0710 389 993
14	Chris Kyalo	Youth Focus	kyalo.chris@yahoo.com	0716 242 446
15	Nduku Makau	ABC Community Development program	abcdevt@yahoo.co.uk ndukumakau@gmail.com	0722 576 024
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17	Elijah K Munovi	SNEP	munovi2007@yahoo.com	0720 224 999

18	Vexinah Mueni	FFWRK	veximueni@yahoo.com	0723 762 949
19	Jacqline	Women SH Group		0733 835 138
20	Peter Kilungu	Greenview	pkilungu@yahoo.com	0710 287 262
21	Tonny Makau	Worldview	makautony@yahoo.com	0720 322 889
22	John Maingi	Vision S H Programme (NGO)	visionselfhelpprogram@yahoo.com	0720 205 087
23	Gideon Nthiwa	Kitonyini CBO	nthiwag@yahoo.com	0714 562 563
24	Steve Muema	Kyenikya Mutomo	stevemuema@yahoo.com	0710 122 237
25	Josephine Mwewa	Maka Widows & Orphans		0712 601 985
26	Daniel Mutuku	Upendo Ophans Care centre	danmutuku@ymail.com	0723 207 856
27	Timothy Kioko	The Disc Initiatives	kiokotim1989@gmail.com	0720 693 228
28	Mary Mutuku	Poverty Eradication Network	marym@penkenya.org	0734 934 375
29	Matthew Muendo	Poverty Eradication Network	mathewn@penkenya.org	0721 767 241
30	Chris Mbiti	Poverty Eradication Network	chirsm@penkenya.org	0722 704 902
31	Anne Tek	Poverty Eradication Network	annet@penkenya.org	0723 651 951