

Non-profit Sector set for major changes PBO Bill signed into Law

By Faith Kisinga

The non-profit sector is set for major changes following the signing into law of the Public Benefit Organization (PBO) Bill 2012 by President Mwai Kibaki. The Act repeals the NGOs Coordination Act (1990).

Among the changes are provisions for engagement in commercial activities by Public Benefit Organization (PBOs), self-regulation through PBO forums monitoring compliance with codes and standards set by their members and the establishment of a complaints and redress mechanism to be known as *The PBO Disputes Tribunal*. The tribunal shall provide checks and balances in cases where the self-regulatory mechanism fails and facilitate easier access by PBOs and the public to judicial redress.

The NGOs Coordination Act (1990) had numerous legal and regulatory gaps, which presented the Government with challenges in designing harmonized plans for the sector and made it difficult to ensure accountability by PBOs.

The gaps in the previous legal regime included insufficient mechanisms and processes for self regulation of PBOs in Kenya, absence of an independent body to provide checks and balances in cases where the self-regulatory mechanism failed, absence of an effective complaints and dispute resolution mechanism for PBOs and Lack of a general framework to guide collaboration between the Government and PBOs.

Conducive environment

Players in the sector expect the new law seeks to provide a favourable environment for the growth and operation of PBOs. This will be made possible through the establishment of an effective legal, regulatory and institutional framework for PBOs and the promotion of values within the sector.

The Act establishes an independent registration and regulatory Body, *The PBO Regulatory Authority*, with a governing board selected through a transparent process, provides clear procedures for registration of PBOs with explicit time lines for processing registration applications, giving steps to be followed, and clear grounds for refusal to register a PBO, or for cancellation of a registration certificate. Significantly, it provides guidelines for Government – PBO partnerships at every level

The Act also spells out integrity, good leadership and accountability from PBOs, their forums and the Regulatory Authority, in line with Chapter 6 of the Constitution, ensures PBOs maintain high standards in their internal governance and provides mechanisms for public access to information on PBOs.

Long journey

The journey that led to the PBO Act didn't start yesterday. It was a long and winding journey. Act! provided critical financial and logistical support during this journey.

In January 2006, Parliament passed Sessional paper No. 1 of 2006 on NGOs. The Paper recognised the need for a policy framework for the regulation and enablement of NGOs. The Policy called for the review of the NGOs Coordination Act 1990. As a result, Civil Society Organizations (CSOs) in Kenya engaged in conversations and consultations around the most desirable regulatory and administrative framework for their operations. This process culminated in the development of an all-inclusive new Bill for CSOs - the Public Benefits Organizations (PBO) Bill.

During the course of the conversations, a broadly inclusive, loosely structured CSO Reference Group¹ was created in 2009. The initial volunteers to this group took on the task of developing a framework of fundamental principles to guide any legislation that might be developed for the Civil Society sector. The Reference Group from its formation, worked to mobilize CSO participation in the development of a new enabling legal, regulatory and institutional framework for CSOs in Kenya. The group also met with various government Ministries, Departments and Agencies including the Permanent Secretary, Ministry of National Heritage and Culture, the Registrar General, the Kenya Law Reform Commission, The Constitution Implementation Commission and the NGOs Coordination Board.

Starting June 2012, the CSO Reference Group worked jointly with the NGOs Coordination Board to reach a common understanding on the type of legal framework that will have the best possible effect of ensuring good governance by CSOs on the one hand, and protecting legitimate civil society activity on the other. The collaboration resulted in joint proposals to the PBO Bill, which were tabled before the Parliamentary Committee on Labour and Social Welfare, at a Stakeholder's retreat in August.

Consultation process

The Public Benefits Organization Act is the result of wide consultation. Starting in 2009, the CSO Reference Group undertook extensive consultations and consensus building on the law review process and the draft PBO Bill through national and regional CSO leaders' workshops and also

¹ See page 3 for more information on the CSO Reference Group.

through thematic meetings, which targeted thematic CSO groups. The regional consultations were held in ten regions across the country.

These meetings provided useful platforms for consultation with the constituencies that will be directly affected by this proposed legislation. Through these processes, over 1,500 civil society leaders contributed to discussions on the PBO bill.

The Reference Group remained open to further review of the ideas contained in the PBO Bill, up till the 3rd Reading of the Bill in Parliament. They encouraged different stakeholders to review the Bill and where necessary, to submit memorandum with proposals for amendment of the Bill, to the Parliamentary Committee on Labor and Social Welfare.

The CSO Reference Group

The CSO Reference Group is co-Chaired by experienced leaders of CSOs based in Kenya and together with the group's members, serve the interests of the sector voluntarily. The current members of the CSO Reference Group include: Act!, Kituo cha Sheria, Inter-Religious Council of Kenya (IRCK), Akiba Uhaki Foundation, Constitution & Reforms Education Consortium (CRECO), Health NGOs Network-HENNET, Institute of Legislative Affairs (ILA), East African Association of Grant Makers (EAAG), Amref Kenya, Diakonia Country Programme, International Institute of Rural Reconstruction (IIRR), ICJ- Kenya, Kenya Human Rights Commission, Viwango and Poverty Eradication Network (PEN) among others.

The CSO Reference Group believes that a new enabling legal environment is essential as it will ensure good governance by CSOs on the one hand, while protecting legitimate civil society activity on the other. The framework will also advance an effective and sustainable civil society sector that enjoys public confidence. Further, the law will enable the country reap the benefit of enhanced contribution by CSOs towards the implementation of the new constitution and realisation of development goals under Vision 2030.

The reference group will continue to mobilize CSOs to participate in the development of regulations, which will support implementation of the PBO Act. They will also seek to create awareness amongst CSOs on the contents of the Act, and what is expected of them under the new framework.

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