



SID

Society for International Development

Memorandum by the Society for International Development to the PBO Taskforce on Amendments to the Public Benefits Organisations Act 2013

4th March 2015

The Society for International Development (SID) is a global network of individuals and institutions concerned with participatory, pluralistic and sustainable driven development. We are dedicated to catalyze and support evidence-based public awareness, policy dialogues and practical action to deliver four promises of the constitution namely devolution, participation, integrity and equality. We work continentally, nationally and have long-term partnerships in one third of Kenya's Counties.

1. We have been deeply concerned by the five sets of hasty amendments to the PBO Act over 2013-2014. These attempts have fallen short of constitutional thresholds on public participation. They generated a sense of a PBO sector under siege and deepened the deterioration of the relationship between PBOs and the National Government. We welcome this opportunity to inform the PBO Taskforce on how to strengthen the PBO Act (2013). We have six sets of recommendations.

Make Taskforce Report Publicly Available at Submission to Cabinet Secretary

2. We urge the Taskforce to make their report publicly available as it is submitted to the Cabinet Secretary for the Ministry of Devolution and Planning. This will make public the views of Kenyans on this issue, prevent any controversy around the bill and keep stakeholders enrolled in the law being proposed. Further, we have five sets of recommendations;

Commence the Act Without Further Delay

3. The inordinate delay since the passing of the PBO by the tenth Parliament has prevented the sector from operating under a regulatory framework far stronger than the NGO Coordination Act of 1990. Key stakeholders – National Government, County Governments, PBOs and the public – have not been able to revitalise the oversight mechanisms, introduce higher public accountability standards and kick start the sector.
4. Furthermore, the nature of the amendments that have followed has left Kenyans and those who invest in Kenya preoccupied with the concern that democratic civic space is in danger.
5. Operationalizing the Act would boost the ability of the sector to make long-term plans and mobilise resources without hindrance. It would also restore confidence in National Government that there is an accountability framework in place that is far superior to the NGO Coordination Act of 1990.

Retain Clauses that Strengthen PBO Self-Regulation and Accountability to the Public

6. The PBO Act aims to strengthen both self-regulation and accountability to the public. This is essential in also building ownership and responsibility in the sector. We urge the Taskforce to keep the provisions that seek to hold PBOs accountable and responsible for 1) Maintaining authentic accounting records 2) Filing these accounts annually with the PBO Regulatory Authority and making them available to the public both virtually on the internet or physically upon demand by a citizen 3) Retaining those accounts for at least five years

Further we wish to propose that the Act be amended to include the provisions that;

7. ***In the event of reasonable suspicion of mismanagement in a PBO's affairs, the Auditor General can be called upon to review the case and make recommendations;***
8. ***The Federation be empowered to directly propose 50% of the nominees to the PBO Authority;***
9. ***Vests responsibility in the Authority to ensure compliance by publicly displaying key accountability documents including Audited Reports, Annual Reports, Plans and Budgets;***
10. ***Lastly, the Authority publishes a state of the PBO sector annual report to strengthen PBO, state and public understanding and accountability.***

Retain Clauses that Encourage Domestic Philanthropy and Corporate Social Responsibility by Offering Tax Incentives

11. We strongly propose the retention of the Second Schedule as it is. This will encourage domestic funding, increase funding diversification, reduce overreliance on overseas development assistance and enhance long-term financial sustainability.

Retain Clauses that Provide for Voluntary Migration to the PBO Act

12. We strongly propose the retention of clauses that propose voluntary migration to the Act. Mandatory migration to the Act will destabilize trusts and foundations among others, which stand to incur high costs in stamp duty on fixed assets and real estates upon changing registration. Compulsory migration will also create a more fragmented sector by lumping together organisations that are diverse and distinctly different in their organisation and operations.
13. A compromise with those that feel strongly about changing the voluntary migration to compulsory would be to stop new registrations of Public Benefits Organisations under the various laws that have existed to date while allowing existing organisations to voluntarily migrate.

Do not Introduce Restrictions on Funding

14. The introduction of any restrictions on foreign funding to the PBO sector will jeopardize a key partner in the Government's capacity to deliver on the Medium Term Plan (MTP) and Vision 2030. More importantly, it will have a negative impact on the one million Kenyans that periodically face starvation and 60% of Kenyans living under the poverty line. The introduction of any amendments to force all development partners to funnel PBO funding through a single agency are equally unworkable. The Development partners have made it clear that they are bound by law not to pass their funding through a mechanism like this. Restrictions are counter-productive and fall short of international best practices.
15. Conservative estimates indicate at present, the PBO sector comprises of over than 9,000 organisations, 250,000 employees and a combined budget of Kshs 80 billion per annum. This sector needs to be strengthened in partnership with the National Government and 47 County Governments to play a critical role in eliminating poverty, disease, food insecurity, youth unemployment, gender based violence, conflict, human rights denial and bad governance.

Conclusion

The future of the Society for International Development and hundreds of other PBOs to generate evidence and knowledge that informs public policy choices and policymakers in Kenya rests on an enabling democratic operating environment. The further shrinking of civic space would inevitably lead to the closure of our offices, staff retrenchment and closure of various programmes with several National Government departments, County PBOs and County Governments. The future of a poverty-free, democratic and well-governed Kenya depends on how you exercise your judgment before the Kenyan public.

We thank you for your careful consideration and adoption of these recommendations.



For further information on this memorandum contact:
Irungu Houghton | +254-733-635-354 | irunguh@sidint.org
www.dialogues.sidint.net | www.twitter.com/sidkdp
