

Jubilee receives a mixed scorecard on their performance of the two years in power.

THE REAL ISSUES OVER CHANGES TO PBO ACT

Dr Alex Awiti's February 24th article "Has Civil Society Outlived its Use" in the Star's page 24 made an important call to public benefits organisations to reinvent themselves.

The passing of the Public Benefits Organisations Act of 2013 by Parliament and its assent by President Mwai Kibaki attempted to do just that.

The Act emerged from a consensus between the state and PBO sector on the need for a strengthened and revitalised sector. It also brought NGO law in line with the new constitution and developments within the sector.

Twenty four months later, it is yet to be operationalised.

This week sees a crucial moment in the future of the sector. After 10 regional consultations, the PBO task force is set to conclude its public consultations on amendments to the Act.

How it packages its findings and what eventually ends up in the National Assembly will place Kenya either on the path of trust and collaboration or the path of mistrust and confrontation between the national government, PBOs and the county governments.

Between 2013 and 2014, the national government made five attempts to amend the PBO Act. They included two separate sets of amendments under Miscellaneous Amendments Bills (November 2013 and June 2014) and a Memorandum containing 54 amendments (October 2014).

Last November, the Ministry of Devolution and Planning gazetted a PBO task force and successfully amended the PBO

By Irungu Houghton

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Act, through amendments to the Security Laws Amendment Bill 2014.

The five interventions were brought to Parliament without prior public notice or consultation with the majority of PBOs. They have sought to increase executive power over the registration, regulation and funding of the sector. All with the exception of the Ministry of Devolution/ Moses Kuria memorandum of October 2014 have attempted to pass substantive amendments within Miscellaneous Amendments bills.

Strengthening the public accountability clauses within the Act is probably the issue that PBOs and the national government can agree on. Like the government, inefficiency, corruption and funding diversion are a curse to the sector.

The PBO Act introduced a number of important new requirements. They include prohibiting governance boards from being paid and having to sign conflict of interest registers and publishing audited accounts and making them available for citizens to see on

request.

The issue that has caused most domestic and international controversy has been the proposal to cap foreign funding to 15 per cent and channel all funding through the yet-to-be-set-up Government PBO Authority.

This proposal re-emerged in October 2014 coupled with the proposal that those organisations that receive more than 15 per cent could be classified as foreign PBOs.

There have been many arguments against this amendment, ranging from the negative impact on development, poverty eradication and foreign exchange to the destruction of a 40-year sector.

The third policy issue is the treatment of domestic philanthropy and tax incentives for firms and citizens who wish to contribute to development.

Overreliance on overseas development assistance has been a concern to the PBO sector. As far back as 1992, a consortium of NGOs had begun organising the biannual East African Fundraising Conference that

worked on diversifying income for NGOs through direct mail appeals, events and corporate social responsibility.

Prior to the PBO Act, there had been close to a decade of effort to reform tax and fiscal law to create incentives for collaboration between the government, private sector and PBOs. The Act sought to enshrine and expand this option.

The October 2014 Memorandum proposed to delete the entire schedule within the PBO Act that promotes corporate social responsibility. Taken with proposals to cut foreign funding, the move would starve the sector of resources.

The fourth tension revolves around executive regulation and self-regulation. The PBO Act embraces both approaches to accountability.

The spirit of the amendments has been to weaken self-regulation and strengthen executive regulation.

The problem with this is that it shifts ownership and responsibility from the sector to the government.

The treatment of these issues will shape the future of the PBO sector and its relationship with citizens, the state and county governments.

Of the two paths; mutual trust and cooperation or mistrust and confrontation -- as a long standing servant of this sector, I pray it is the former.

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