

Poverty Eradication Network Newsletter

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1. Natural Resource Management

Kalama Acts Development Group- KADEG and Kyevaluki Social Development Forum CBOs launched community environmental facility projects supported by the Community Development Trust Fund CDTF. The projects will run for a period of three years and have been allocated 24million and 20 million respectively. PEN has provided technical support in developing the project proposal and will also be the strategic partner of the two projects during the implementation period. The focus areas of the projects will be afforestation, construction of dams and promotion of energy saving technologies such as the fireless cooker. The projects are projected to commence in June 2012.

2. CIVIC EDUCATION PROGRAM

INADES Formation and PEN organized training for community resource persons and a review workshop for the same. The program involved civic education in Machakos county. A total of 28 Resource Persons have been trained and are helping the community in understanding the new constitutional dispensation. The main areas of focus are devolution, leadership and integrity, land and environment and voter education.



A proposal is also being drafted in partnership with Kitui Development Centre, BIDII, CANTAS, Ukambani Christian Church Service, Catholic Diocese of Kitui and Centre for Human Rights and Civic Education to conduct this program in Kitui and Makeni counties as well.

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3. PEN Management and Development Consultants Limited (PMDC)

Formation of a Consulting company, PEN Management and Development Consultants Limited (PMDC) is the final stages.

The main purpose of the new company is to advance best practices and improve capacity in poverty reduction programmes, policy, philanthropy and corporate social investment, through provision of consulting services to foundations, not for profit organisations, corporations, global institutions and government.

PMDC envisions an economy in which government works with civil society and the private sector to create positive social and environmental impact while generating economic value.

PMDC Goals:

- Set and meet financial targets
- Provision of high quality work in line with PENs values which enables all actors improve their engagement across the sectors to help positively transform society
- Improve actors engagement with other sectors to foster collaboration in support of their efforts to improve and transform society

Targeted clients will include:

- Government – Ministries, County Governments
- Corporate Sector
- International and regional Not for Profit Organisations (INPOs)
- Donor agencies, Global institutions and Grant Making Organisations – Foundations

Some examples of the work the company is aspiring to do are as follows;

- Develop donor strategies and policies
 - Facilitate Stakeholder Consultation processes, evaluating grant making mechanisms
 - Improve Government, Corporate and Civil Society Consultations
 - Design, develop and implement funding and grant making mechanisms
 - Develop leadership and management capacity for professionals in targeted sectors
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4. Public Benefits Organisations (PBO) Bill, 2012

Quest for an Enabling Environment for Public Benefit Organisations in Kenya

Since 2009, Civil Society Organizations (CSOs) in Kenya, under the umbrella of the **CSO Reference Group**, mobilized CSOs to participate in the development of a new enabling legal, regulatory and institutional framework for CSOs in Kenya. This process, which is now in its fourth year, has led to the development of an all inclusive new Bill for CSOs - the **Public Benefits Organisations (PBO) Bill, 2012**. The **PBO Bill, 2011** has been published in the Kenya Gazette Vol. CXIV – No.35 dated 4th May 2012.

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. This is critical to the nation as part of the framework for the engagement of CSOs in the implementation of the Constitution of Kenya 2010, realizing the MDGs and implementing Vision 2030.

The Bills of Rights and the principle of the freedom of association as enshrined in the constitution allows all Kenyans to establish associations, including civil society organizations (CSOs), without necessarily registering them. Chapter 4 of the Constitution provides for the rights and fundamental freedoms for each and every individual, Article 19(1) States that *"The Bill of Rights is an integral part of Kenya's democratic state and is a framework for social, economic and cultural policies"*. Article 36 provides for the freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

While CSOs in Kenya are diverse in nature, there are also many registration and regulatory regimes for CSOs in Kenya, making it difficult for effective legal and statutory compliance and accountability for CSOs. The various CSO Laws including the NGO Coordination Act of 1990, the Companies Act Cap 486 (for Companies Limited by Guarantee), Societies Act CAP 108, Trustee Perpetual Succession Act CAP 164, and Trustees Act CAP 167 have been unable to bring on board the diverse spectrum of the Civil Society Organizations. Sessional Paper No. 1 of 2006 provides that the existing fragmented and uncoordinated legal and institutional framework gives CSOs multiple avenues for registration. This makes coordination difficult. The Sessional Paper did recommend that the overlapping legislative Acts should be harmonized.

The gaps that exist in the current Kenya CSO legal, regulatory and institutional frameworks are legion. There are systemic difficulties for those seeking a harmonized reporting framework, difficulties in monitoring compliance and accountability by CSOs, lack of explicit provisions to address issues of leadership and integrity as provided for in the constitution, absence of an independent review body to provide checks and balances in cases where the self-regulatory mechanism has failed, absence of procedural rules or guidelines for dealing with complaints from CSOs and their members. Also there lacks a general framework of principles for collaboration between government and CSOs

The answers to these challenges facing the sector lie in reforming the sector *in toto*. This includes reviewing the legislation informed by the lessons learnt from the implementation of the current law and more importantly, carrying out institutional reforms for a new culture to be nurtured in the sector.

Since 2009, there have been wide consultations on this process. A fact finding and consultative process was conducted in March –May 2010 and after the first draft of the Bill was developed, a validation process was conducted in February to March 2011. These consultations were held in ten regions across the country. Over 1,500 civil society leaders input into the bill. Thematic consultations were also held with prominent networks of the civil society as well as the NGO Coordination Board and the NGO Council. These facts are documented.

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Research on the nature of civil society and the history of CSO legislation in Kenya, comparative studies on other global legislations and new trends of international best practice, development of guiding principles and the production and refinement of various drafts led to the final draft Bill by September 2011 by a professional legislative draftsman.

The PBO bill, 2012 is purposed to achieve a new legal, regulatory and institutional framework for Public Benefits Organisations (PBOs) in Kenya, to ensure that there are high standards of governance, transparency and accountability, to promote compliance by public benefit organisations (PBOs) with their legal and statutory obligations through exercising effective control and management over the administration of their activities and funding and to promote a spirit of co-operation and shared responsibility within government and among donors and other interested persons in their dealings with public benefit organisations (PBOs).

Key Highlights of the PBO Bill

- **Protection of the freedom of association:** The draft bill is in line with the Spirit of Article 36 of the constitution which guarantees for the freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. The enactment into law and implementation of a **Public Benefits Organisations (PBO) Act** will effectively contribute towards realization of these rights;
- **Basis for the existence of a variety of types of Civil Society Organizations (CSOs):** It provides for the inclusion of all types and forms of CSOs doing public benefit work under one single Act- the **Public Benefit Organisations (PBO) Act**;
- **Framework for collaboration between Government and PBOs:** Section 25(3) of the proposed bill provides an institutional framework for principled partnership between Government and PBOs at all levels;
- **Voluntary Self-regulation by PBOs:** Allows the Public Benefit Organisations to determine standards, certifications and adherence to professional code of conduct;
- **Complaints and Redress Mechanism:** Part VI provides for the establishment of an Independent Disputes Tribunal;
- **Internal Control Mechanisms for PBOs:** Prescribes minimum provisions to be included in the governing documents of Public Benefit Organisations;
- **Leadership and Integrity:** It advances and demands good leadership and accountability from PBOs in line with the spirit of Chapter Six of the new constitution on Leadership and Integrity;
- **Basic Financial Transparency and Reporting requirements:** Sections 21-24 provides for financial transparency and reporting by PBOs;
- **Clear Reporting and Compliance requirements:** The draft PBO bill provides the basis for harmonized reporting for all forms of PBOs;
- **Establishment of an Independent Registration and Regulation Agency:** Sections 25-27 outlines a rigorous process for the selection of members of the governing body of the PBO Commission in line with the provisions of the constitution;
- **Registration and Regulation of PBOs at the county level:** It provides for easier registration and regulation of PBOs at all levels.

Participating Organisations

Kituo cha Sheria, Akiba Uhaki, Constitution & Reforms Education Consortium (CRECO), Viwango, Peace & Development Network Trust (PeaceNet), Africa Youth Trust, URAIA, ICJ- Kenya, Health NGO Network-HENNET, Inter-Religious Council of Kenya (IRCK), International Institute for Legislative Affairs (ILA), ACT (formerly Pact Kenya), National CBO Council, Children Legal Action Network (CLAN), East African Association of Grant Makers (EAAG), Amref Kenya, Oxfam GB, African Network for the Prevention and Protection of Child Abuse and Neglect (ANPPCAN), Plan International, Action Aid International Kenya (AAIK), Pambazuko Foundation, African Community Development Media (ACDM), Aga Khan Foundation (AKF), Diakonia Sweden –Kenya Country Program, International Institute of Rural Reconstruction (IIRR) and Poverty Eradication Network (PEN).

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