

## Expanding the Scope for Public Benefit Organizations (PBOs) and Citizens to Engage with Electoral and Governance Reforms



### Kisumu Regional Forum: Ber Biro Irwa (BBI); Canaan Delivered Red Hot

Victoria Comfort Hotel  
December 4, 2020



## 1. Introduction

### a) Opening and welcome

Session started with a word of prayer and welcome remarks from the Convener, Chris Owalla who welcomed everybody to the forum.

### b) Introductions and Levelling of Expectations

Participants each had a chance to introduce themselves and make a brief reflection on BBI in terms of what stands out a surprise for them.

- That those who are responsible for creating the problem were now masquerading as the solution makers was surprising
- The metamorphosis that politicians go through for example Sonko is out of this world
- Worried how CSOs have left politicians to make all important decisions in Kenya. Our voices are diminished
- Politicians don't seem to notice even the Covid crisis
- People are still asking for 'sambaza' little wooden piece to join seat in matatus when they overload passengers
- CSOs can make a great impact on inclusion as inspired by an incident at the venue that led to change of meeting room from upstairs to the ground floor to accommodate a participant with a physical disability
- Shock at what is happening to devolution in Nairobi that could happen to any county
- Many citizens don't really care, most are in bed with the state and signed BBI
- How are we signing what we don't know?
- Is this the right time for constitutional change? Are we ready for a referendum?
- Is this a parliamentary or a popular initiative? First the constitution we hail has not been fully implemented. Second we have a dead opposition and we are not providing an alternative.
- The more we think things are changing the more they remain the same
- There are manifestations of corruption in the BBI process, the example of police officer arrested in the Rift Valley for tearing a BBI book was surprising
- BBI is presented as the magic bullet but it just glosses over pertinent issues
- It would appear instead of implementing the best constitution, we are keen on bettering the best before implementing the best
- The tripling of tuition fees was a surprise for one while the collapse of the zero tolerance to corruption claims was for another. Police are taking bribes as a normal
- The disregard for court orders and rampant evictions
- State was driving a constitutional change agenda with a dead opposition should worry

### c) Background/Objectives and Outcomes of the Project: Patrick Ochieng

With support from USAID's Safeguarding Democratic Space in Kenya (SADES-K) project funded through FHI 360, the CSRG/PEN Consortium has been implementing the project whose thrust is *Expanding the scope for PBOs and citizens to engage with the BBI Report for the continued transformation of Kenya's economic, political and institutional governance*. The objectives of the project are:

- i. To build the momentum for the continued electoral, economic and institutional reforms and expand the choices available to Kenyans
- ii. To hold political leaders, government and the BBI reform initiative to account

**Expanding the scope for PBOs and citizens to engage with the BBI Report for the continued transformation of Kenya's economic, political and institutional governance** is an extension of the first project *Strengthening Civic and Democratic Space through the Implementation of the Public Benefits Organizations Act (2013)*. Whereas this latter project sought to secure a more robust and facilitative policy, regulatory and operational environment in which citizens and their organizations can become proactive actors in the ongoing efforts to bring about **fundamental transformation of Kenya's democratic infrastructure**, protect human rights, strengthen democracy and build prosperity for all in the country, its extension was focused on multi-sectoral engagement in which Civil Society targets key actors and institutions such as Parliament, IEBC, Political Parties, State Law Office, BBI Steering Committee among others to engage with electoral and governance reforms. The scenarios project seeks to prepare Kenyans for different scenarios that may occur in lead up to the elections and inform them on how to build the momentum for continuing **electoral, economic and institutional/governance** reforms as well as enhance CSO accountability mechanisms on electoral and governance reforms including the BBI initiative. The main project facilitated dialogue between PBOs and government stakeholders to develop rules and regulations for the PBO Act, prepared PBOs for the new PBO regime through modelling and scaled up advocacy on commencement of the Act. All this was taking place on the back of the Building Bridges Initiative that was proposing amendments to the Constitution following the handshake between the President and the opposition leader his challenger in the controversial 2017 election. Given the dilemma the country has faced every time there is an election the project team found it useful to engage an external scenarios study consultant to undertake such a study as possibilities of a divisive referendum, a troubling transition election and the unprecedented impact of COVID that had hit the world presented a worrying future. The consultant would be accompanied by a reference group of select stakeholders to backstop the process and the project team would organize 7 regional scenarios workshops to get the pulse of what different regions feel about BBI and the proposed referendum. This is the fifth regional forum targeting select stakeholders from the Counties of the Western region.

## 2. Forum Proceedings:

### a) Take on BBI by Chris Owalla CIAG-K

Chris shared his brief take on BBI as follows:

- There are some who believe there is a constitutional moment. Others contend that we should implement the 2010 constitution fully before amending it.
- The BBI document has good and bad elements
- The budget architecture that it proposes is problematic. For example the provision that Auditor General's Report that had to be approved by Parliament to be used has been waived by BBI.
- BBI may affect protected constituencies such as Vihiga and Budalangi without a comprehensive consultation process similar to the one that birthed them
- BBI is amending 13 chapters of the constitution without an analysis of the impact this will have on other chapters
- It is unclear who will police and oversight the Ward fund with all the problems of CDF
- The proposal to appoint MCAs as CECs is unworkable

### b) Brief Remarks from Dr. Katindi Sivi the Scenarios Consultant

- The consultant joined those who had hope that Kibwana's case stops reggae given the reality that MPs and MCAs were all incentivized. It was amazing for her that the narrative that if Baba has read then who are you to say no still ruled.
- It would appear the region believes BBI is our moment, our baby. The wave is palpably BBI here but the truth is that grassroots people have not fully understood BBI and do not know why the reforms are being proposed now or what the implications might be on the ground
- Scenarios are really planning tools and will help us to prepare for risk. We have used them in Kenya to deal with different situations, they were used in post-apartheid South Africa and are not predictions.

### c) Plenary Discussions to Unearth Narratives, knowledge, Mindsets and Prejudices towards BBI

- *Citizens don't know what they don't know:* People are asking what they are signing. Referendum on what? In the last referendum booklets were delivered early but on BBI the DC, sub-DDC and assistant chiefs have been given forms and 3 days to have them complete. For a region that leads in terms of fighting for human rights how can we allow this to happen? No matter how few we are we should stand up and say something. The moral question is important. Why are voters being intimidated to sign or lose benefits for senior citizens? There is np braille version for example.

- *Process is as important as the product: “When I saw FHI 360, I saw BBI”*, I remembered their visit to Homa Bay County with the BBI taskforce to collect submissions which in my view did not amount to public participation. The meeting was not publicized, its agenda was not shared prior and participants spoke instead about devolution instead of the 9-point agenda introduced. Even then the submissions at that meeting appear nowhere in the final report.
- *Politicians set the agenda:* The BBI push is highly emotive and many in the region believe that Ber Biro Irwa (BBI) a coinage of the acronym to mean glad tidings are ahead for us is swaying everyday people to support BBI. When the tune is changed the dance style changes as well, so if the two leaders part ways it is conceivable that the dance will tilt again. The BBI referendum some believe will be different from the 2005 or 2010 referendums. The public is being mobilized to go and sign the BBI forms in Bondo to make Jakom President, wild claims indeed the same mobilization is taking place in churches, among women groups etc. The Raila or Orenko has read narrative is still alive.
- *There is poison in the BBI Content:* Women by losing the Woman Representative position will be losing 49 million and 44 employees each for Kisumu County alone. Migori and Homabay with a combined population that is 100,000 less than Kiambu gets no additional constituency when Kiambu gets 6. With these 6 the County gets an additional CDF vote of 109million by six. How can anyone justify this? For saying this at a radio station, Manyatta Youth Bunge have banned me from stepping at the Bunge believing that am opposing Baba’s project.
- *What will people lose if BBI passes?* We must re-shape conversation to prepare people for a post BBI future and what they will lose if it passes, the difficulties ahead etc. people should for example get their insurance. When MCAs become CECs oversight in a county like Kisumu which is wholly ODM will collapse completely.
- *Should we remain outside and pee inside or go in and pee outside?* CSOs have lost out and are playing catch up. Wanjiku knows what BBI high priest wants with BBI – power. They appended their signatures for this reason. CSOs cannot cope with the ethnic political mobilization due to its dismal capacity. CSOs will be condemned whether they support, oppose or remain neutral on BBI. Citizens are not clear what they want, some believe Counties will be strengthened but many more are apprehensive about an expanded legislature. People do not trust CSOs but we can play the role of shaping debate, promoting the truth and intervening between the politicians by taking a clear position. Even if we cannot stop reggae we can influence how it is developed in the best interest of the people
- *Is this Raila’s final gasps of redundancy:* A popular radio presenter was reported to have said, “Loko ohand dhano tek” (Trading in humans is such an uphill endeavor translated literally); taken to mean that human endeavors are very complex. That even though people know BBI is not a magic bullet for all problems citizens still believe the repeated lies that it will fix their problems. People still fall for the fear peddling rather than logic. People still believe their ethnic lords will protect them. They still have faith in elections and the election management body that rigged their vote. In the region BBI is selling like hot mandazi that needs no signatures to pass. The BBI messenger is believed without question. Opposing BBI is therefore seen as support for Ruto. Politicians are after votes, minds and souls and these

they seem to have won. But a keen look at tone, wording and body language from each region is necessary to ascertain that BBI will mark the end of an era in Luo politics. In the best case scenario Raila becomes President and in the worst case he loses BBI either to Uhuru's betrayal or Ruto's popularity but either way his reign comes to an end as the popular will definitely have to shift. The midas touch that is associated with Baba seems to have run out, and the canaanites will be aggrieved if the plans fall apart.

### 3. ASSUMPTIONS SURROUNDING BBI

It is the year 2025. We are gathered at Victoria Comfort Inn to reflect what happened between 2020 and 2025. Discuss what you think happened in the following areas.

YES	Issue	Opportunities	Threats	
1	BBI Referendum	<ul style="list-style-type: none"> <li>Increased allocation of funds to the counties</li> <li>President will run the government smoothly</li> <li>More money at the Ward level</li> <li>Stability of the country</li> <li>More representation through increased constituencies</li> <li>Accountability by cabinet ministers – they can account to parliament</li> <li>Constitution will be strengthened on national values</li> <li>Strengthen electoral justice system from 14 to 30 days for the presidential election petition</li> </ul>	<ul style="list-style-type: none"> <li>High wage bill</li> <li>Level of empowerment of PwDs will be minimal</li> </ul>	
2	Electoral System and 2022 Elections	<ul style="list-style-type: none"> <li>Official opposition will be back</li> <li>There will be a prime minister and two deputies</li> </ul>		
3	State of the Economy	<ul style="list-style-type: none"> <li>The economy will improve thus more taxes</li> <li>There will be increased productivity in the tea, sugar cane and rice sectors</li> <li>Counties to account on how they have utilized their budgets/expenditures via the bill of rights angle?</li> </ul>	Public finance not attended to	
4	State of Institutions	IEBC	<ul style="list-style-type: none"> <li>Very transparent and accountable</li> <li>No political violence</li> <li>Baba's victory is secured</li> <li>BBI addresses issues in an inclusive manner</li> </ul>	More impunity might be witnessed with possibility of dishing out victories
		County Governments	More resources will be given to the counties	<ul style="list-style-type: none"> <li>Weak oversight</li> <li>Late disbursements of resources</li> <li>Others will be denied opportunities</li> <li>Civil strife</li> <li>People will turn against Jakom</li> </ul>
		Judiciary	Protect our thieves (interest) since the BBI passed	Executive is supreme

			<ul style="list-style-type: none"> <li>• Government will control the bench</li> <li>• Backlog of cases will be reduced</li> </ul>	<ul style="list-style-type: none"> <li>• No independence of the judiciary</li> </ul>
		Anti-Corruption	Naming and shaming of those involved in corruption and will be managed by the locals	<ul style="list-style-type: none"> <li>• Impunity</li> <li>• Shoddy investigations</li> <li>• Manipulation by ‘tenderpreneurs’</li> <li>• EACC used to manipulate the locals</li> </ul>
		Security Agencies	<ul style="list-style-type: none"> <li>• State security will be used by politicians</li> <li>• The Nyanza region will be protected as they will be part of ‘deep state.’</li> <li>• There will be safety</li> </ul>	<ul style="list-style-type: none"> <li>• Police brutality will increase</li> <li>• Political manipulation of the security agencies</li> <li>• Shoddy investigations of crimes</li> </ul>
NO	<b>Issue</b>		<b>Opportunities</b>	<b>Threats</b>
1	BBI Referendum		<ul style="list-style-type: none"> <li>• Explore more constitutional avenues and implement the constitution in totality</li> <li>• People’s voices will be heard. Fair process involved</li> <li>• Implementation of things without political pressure</li> <li>• More funding for CSOs since they will have a voice and also enabled the voices of the people.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of implementation leading to a clamor for another referendum due to unresolved issues</li> <li>• Threats to our social and economic development</li> <li>• Government will be hard on CSOs because BBI did not pass</li> </ul>
2	Electoral System and 2022 Elections		<ul style="list-style-type: none"> <li>• Transparent electoral system</li> <li>• Look into the gaps that exist and correct them</li> <li>• New team may come in and ensure a better turnout for the 2022 elections</li> </ul>	<ul style="list-style-type: none"> <li>• Electoral commission cannot conduct an election sustainability</li> <li>• Rigging claims and election credibility</li> </ul>
3	State of the Economy		<ul style="list-style-type: none"> <li>• Investors will have more confidence in the country</li> <li>• Recovery of the economy</li> <li>• No extra staffing costs</li> </ul>	<ul style="list-style-type: none"> <li>• Increased public debt</li> <li>• Blame games will continue</li> <li>• Rising inflation as a result of the debt burden</li> <li>• Time wasted and money wasted of elections and referendum</li> <li>• SMEs will not develop as much if the tax holiday is not implemented</li> <li>• No long term economic growth since more focus will be on foreign investors rather than local investors</li> </ul>
4	State of Institutions	IEBC		



	County Governments	Able to show how the 15% is put into use in the counties so that more funds can be disbursed	<ul style="list-style-type: none"> <li>• Lack of projects implementation</li> <li>• Increased corruption the counties</li> <li>• Uneven development in the counties because of lack of equal distribution of funds</li> </ul>
	Judiciary	Independence of the judiciary retained	<ul style="list-style-type: none"> <li>• Lack of implementation of laws/court orders</li> <li>• Interference from the executive</li> </ul>
	Anti-Corruption	Improvement can be made and loopholes filled	<ul style="list-style-type: none"> <li>• There may be escalation of cases of corruption</li> <li>• DCI may take over much of anti-corruption cases with a feeling that EACC is not sufficiently dealing with corruption cases</li> <li>• Corruption cases not dealt with</li> </ul>
	Security Agencies	Status quo maintained	Status quo maintained

#### 4. Closing Remarks

In conclusion it became apparent that its difficult to rationalize with irrational people. Civil society is fragmented, Kenyans are not listening to logic, election managers can rig the referendum and even the elections against Raila like they have done before. It is important that we start asking how we can play their game against them or how we can confuse the process?. Civil society must accept that we cannot change a political process using non-political means. We must catch up with citizens and the political class who appear to be ahead of us



Paul Olunga of Freedom of Information in Nandi puts across his point

**PROGRAMME****Regional CSO Dialogue Forum - Kisumu****Activity Agenda**Date: **December 4, 2020**Venue: **Victoria Comfort Inn, Kisumu**

<b>Time</b>	<b>Activity</b>	<b>Person in charge</b>
9.00 – 9.30	Arrival and registration	Ludi
9.30 – 10.00	Welcome and Introductions	Ludi
10.00 – 10.15	<ul style="list-style-type: none"> <li>• Background and objectives of the project</li> <li>• Intended outcomes of the meeting</li> <li>• Opening Remarks</li> </ul>	Patrick Ochieng
10.15 – 11.15	Discussants on the Reform Agenda including BBI Report	Chris Owalla
11:15 – 11:30	<b>Tea Break</b>	
11:30 – 13:00	Plenary Discussions on the Reform Agenda	Patrick Ochieng
13:00 – 14:00	<b>Lunch</b>	
14.00 – 14.20	Breakout sessions	Patrick Ochieng
14:20 – 14:50	Reporting on Breakout sessions	
14:50 – 15:00	Wrap-Up	Patrick Ochieng

**LIST OF PARTICIPANTS**

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