

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



Mombasa Regional Forum

Royal Court Hotel
26th November 2020



1. Introduction

a) Opening

The meeting began with a word of prayer followed by a round of introductions in which participants also shared their fears for the Country in the wake up heightened political campaigns to have the Constitution amended.

b) 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 BBU 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 third regional forum targeting select stakeholders from the Coast Counties.

c) **Opening Remarks: Ludivicus Omollo-PEN**

- On behalf of PEN Omollo welcomed the participants to the meeting urging for honest and open participation to diagnose the challenges arising from the BBI process
- Dr. Katindi welcomed all participants to the session. She clarified that scenarios are not about predictions but a science that is gaining popularity for purposes of planning for futures.

2. **Forum Proceedings:**

a) **Two Practitioner's take on BBI – Oduor of NCKK and Natto M. - HRD**

- My view is that BBI is generally good save for lack of clarity on the proposals to have a PM and whether it is the presidential runners up or 2nd runners up who become the PM. Similarly who becomes leader of opposition in the event these posts qualify to the PM position? To the current political leaders, this is an opportunity to teach each other a lesson. Where is the citizen left? We in civil society have spent a lot of time opposing BBI. I have told colleagues BBI is with us and will go through. We need to get involved. CSOs seem to be in the habit of opposing everything and too much time is being spent on discussions are about peripheral issues rather than the main content. The 'train has left' narrative questions in any other conversation is of importance because Government has machinery to ensure that BBI goes through 'whether we like it or not'

b) **Plenary Discussions: Unearthing knowledge on BBI, Mindsets and Prejudices**

- *Where is the place of public participation? The BBI was for 2 individuals. Is the place of mwananchi important? Does public participation mean agreement or just presence? With the president appointing the PM, it remains a winner takes it all system. From the trend and push, BBI has shut doors to any other discussions.*
- *What is in the BBI proposals for us? Ward Fund may reduce marginalization. However, MCAs are the ones to decide on how this Fund will be established. With CDF as well, won't this be problematic? This is the question politicians ask of the BBI and therefore MCAs see the ward fund as a good reason to support BBI.*
- *Are there losers and winners? BBI won't solve Kenya's main problem e.g. inclusivity. Only Executive seem to be have been considered. Women loose in the BBI. Ombudsman for the*

Judiciary is critical but should not be appointed by the president. With MPs being cabinet ministers, chances of inclusivity reduces since as in the current system, the president can appoint minorities into the cabinet. Other issues in the report can be done in parliament. The (wage) burden is already high adding new officers and their staff, and the existing debt will multiply the burden. Women still find it difficult in political contests, you cannot win in politics when you don't have tools of power. Woman reps are not underperforming as some aver, the position was created to put a spotlight on them. Men have also been underperforming. BBI will bring police under politician's control. History has not been kind to such a system like an Ombudsman appointed by president that opens room for abuse. If women are not performing in the National Assembly, will they perform at the senate? No women want to talk about the top 5 positions (President, DP, PM and 2DPMs). BBI is not clear on two-thirds gender rule. 47 women in senate will not solve this. Nominated positions have no voice. BBI is not talking about jobs for the youths and the communities. BBI does not talk about dignified healthcare. Are women being told to leave contested positions for men so as to be nominated?

- *Where is BBI meeting CSOs?/Other Voices?* The urban poor voices are generally opposed to BBI. They were not given a voice in the process. When they were involved, their voices were not included. Some urban poor wanted a welfare state to cushion the poor. Tax holiday were not beneficial since the youth already lack capital to even start the business. BBI conversation is a contest between 'hustlers and dynasties'. '95%' of the urban poor have not laid an eye on the document. Can all our issues be captured in the BBI Report? What is needed is a broad consensus that BBI is certainly not. We are here as CSOs saying that the BBI document will pass. In 2005, we seriously opposed the Wako draft. Civil society is also held in a tight spot. When we oppose, we are associated with Ruto. So what position do we as Civil Society Take?
- *Is succession the elephant in the room?* DP cannot run for same position again. The expanded executive will allow him negotiate with others. BBI may bring about ethnic hatred. Some tribes support it already. BBI is not being sold in the Rift Valley. Kenyans vote 6-piece. It happened in 2005 depending on who backs what. We need to admit that Kenyans make decisions based on the direction taken by top political leadership. For Ruto's supporters, they oppose BBI to support Ruto. Same to Raila's and Uhuru's sides. Once political kingpins such as Joho supports BBI, CSOs can do little to change the outcome.
- *Can the reggae be stopped?* Already 30 governors were present during the signature launch. Do Civil Society stand a chance? Some will simply oppose BBI to express their dissatisfaction with the government. We don't have a clear position as a sector. Winning is not enough, being on the right side of history is also very important. CSOs need a solid agenda achieved by better understanding and reading of the document. Positions on the BBI has been shifting. Will this continue? Is CSOs position having this behavior? CSOs need a voice of reason that does not rely on the Yes/No positions

3. ASSUMPTIONS REGARDING BBI

It is the year 2025. We are gathered at Royal Court Hotel 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"> Those who lacked representation opportunities got it Other areas will also be represented Old guards will still remain relevant Opportunity to vie for a different position (e.g. MP to become PM) 	<ul style="list-style-type: none"> There shall be competing interests Increased wage bill due to expanded legislature and Executive New interests will lead to calls for more referenda 	
2	Electoral System and 2022 Elections	Peace and stability since we have been able include more people/opposition	<ul style="list-style-type: none"> Election challenges because of proximity between referendum and the general elections, and new commissioners with limited time to prepare for 2022 elections Confusion at the ballot with more candidates at the ballot 	
3	State of the Economy	<ul style="list-style-type: none"> Stable economy due to peace. Investors likely to invest. Easy collaboration with government on various economic issues Youth will be able to access more opportunities 	<ul style="list-style-type: none"> More borrowing thus a debt burden to the citizens Wage bill is high due to creation of more positions Corruption will still exist Tax likely to go up because of the high expenditure on wage bill 	
4	State of Institutions	IEBC	<ul style="list-style-type: none"> Public trust and political goodwill within the country Provide opportunity to strengthen the electoral processes in the country. 	
		County Governments	Better service delivery at the counties due to increased resources	<ul style="list-style-type: none"> Tug of war between Ward Development Fund and the National Government Constituency Development Fund Increased corruption at the counties
		Judiciary	Good checks and balances at the judiciary with introduction of ombudsman	Likely to be weakened with the Ombudsman
		Anti-Corruption	<ul style="list-style-type: none"> Empowerment of EACC with proposals for new penalties and time taken to conclude cases Witness protection will lead to more reporting by the public 	<ul style="list-style-type: none"> EACC will have lots of confusion and delays due to inherited cases and huge workload especially with the time limits Managing the expectations has become problematic
		Security Agencies	Reformed police	

NO	Issue	Opportunities	Threats
1	BBI Referendum	<ul style="list-style-type: none"> • The young will be able to get in • It will be an opportunity for some politicians to get publicity • We will be able to see our hidden potential as a country • We can use it as an opportunity to strengthen the presidential system • We get an opportunity to dialogue again and start afresh. The current system supporting BBI will oppose such conversation 	<ul style="list-style-type: none"> • Old guard will retain their seats • There is a likelihood of violence • The incumbents may want to cling to power (2007, Ivory Coast, etc.)
2	Electoral System and 2022 Elections	<ul style="list-style-type: none"> • If no wins, it will confirm that Wanjiku still holds power • The No team can regroup to win the 2022 elections • Presidential system will be strengthened • The decision making power will be with the people • More dialogues on the electoral systems reforms 	
3	State of the Economy	<ul style="list-style-type: none"> • Corona is an opportunity to have local investments • Wage bills remains the same 	<p>Recession due to referendum + Covid-19 + other factors</p> <p>Persistence of corruption</p>
4	State of Institutions	IEBC	IEBC shall be disbanded with the current commissioners going
		County Governments	The county government will receive less resources as compared to current disbursement
		Judiciary	Opportunity to interrogate why ombudsman was needed in the first place
		Anti-Corruption	Opportunity to dialogue for Anti-corruption reforms
		Security Agencies	Opportunity to further negotiate for accountability in the police service
			More corruption and weaker investigations and prosecution systems

4. Closing Remarks

In summary BBI consolidates all the bad behavior our politicians are known for, the pursuit of self-interest thus focus on Cabinet slots in Parliament, increase in number of constituencies, expansion of the executive and adding advantage to regions already advantaged. An expanded executive on the surface looks like a good thing to disperse power but this disappears once one realizes all are appointed by the President. It would make sense if the PM is elected by the people.



Mombasa Participants during a Working Group Session

PROGRAMME**Regional CSO Dialogue Forum - Mombasa****Activity Agenda**Date: 26th November 2020.Venue: **Royal Court Hotel, Mombasa**

Time	Activity	Person in charge
9.00 – 9.30	Arrival and registration	Ludivicus Omollo
9.30 – 10.00	Welcome and Introductions	Luvidicus Omollo
10.00 – 10.15	<ul style="list-style-type: none"> • Opening remarks • Background and objectives of the project • Intended outcomes of the meeting 	Dr. Katindi Sivi Patrick Ochieng
10.15 – 11.15	Discussants on the Reform Agenda including BBI Report	Oduor/Natto
11:15 – 11:30	Tea Break	
11:30 – 13:00	Plenary Discussions on the Reform Agenda	Patrick Ochieng
13:00 – 14:00	Lunch	
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

NAME			
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Kalama Jolushi	Youth	Male	700183940
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Doris Ojiambo	Youth	Female	717695146
Charity Chahasi	Non-youth	Female	792765821
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