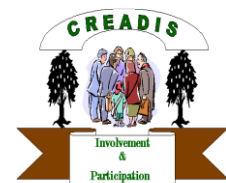


## Expanding the Scope for Public Benefit Organizations (PBOs) and Citizens to Engage with Electoral and Governance Reforms



### Nairobi Regional Forum: Civil Society Needs Good Witchcraft to Disrupt BBI

Desmond Tutu Conference Centre  
December 11, 2020



## 1. Introduction

### a) Opening and welcome

Session started with a word of prayer and welcome remarks from the Project Liaison Patrick Ochieng who took participants through a brief sharing of expectations and objectives of the forum.

### 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 BBUI 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 seventh regional forum targeting select stakeholders from the Counties of the Nairobi and Kiambu.

## 2. Forum Proceedings:

### c) Reflections on scenarios

- We are facing an uncertain future. The state is polarized, families are and the region is
- As civil society we must find solutions despite the resistance from warlords
- Covid-19 has made it worse. The future of Kenya is in the hands of God, state of the country is uncertain
- We are in a forced constitutional moment
- BBI has a lot of goodwill politically, we can seize the moment and push our views as politicians also push theirs
- We cannot afford to stand aside, Kenya is in a crisis and we must stop watching
- The state of the nation is interesting, the choice we are faced with from the political class will determine the future
- Citizens are not taking charge, state is captured
- I am happy for Kenya because we have room to speak and in our polarities every voice has space to contest

### d) Take on BBI by participants

- Tom Oketch shared brief sentiments about BBI. He noted that BBI proponents were listening to the public as for example the public has always made the case that Women reps are doing nothing and this call has been heeded.
- People said they want more money in the counties and this has been include
- Some changes resonate with Kenyans, some proposals are good for example youth are being told about tax relief. On the flips side the number of representatives is too high even the current number should be reduced to 100.
- That these proposals can pass we must discuss what we should do with the implications

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

- *BBI packaged with sweeteners to appease different people:* There are various provisions that appease some and many others that are offensive. The document has some good ideas and quite a number of difficult ones.

- *BBI's political goodwill can be extended to achieve more:* We can utilize the goodwill arising from the BBI process to achieve many of these reforms without changing the constitution. Why offer a 7 year tax holiday instead of dealing with the barriers that inhibit many from getting their livelihoods. For example the gender question can be solved by dealing with political parties, shunning the tokenistic approach and getting the political leaders to commit to this.
- *The electoral injustice question has morphed into an overhaul:* Kenyans are being shortchanged because what was a handshake to sort out electoral violence has ultimately morphed into a con game and fraud to change the constitution widely. We know the causes of violence in our elections since pre-2002 era. Earlier when it was pre-election violence, competition was geared towards destabilizing the voters to block certain candidates, but lately the contention has shifted to results which then speaks to management of elections. This does not require an overhaul of the constitution just amendment that would never have brought in the PM position and two deputies.
- *The content has challenges:* Why are we changing the governance structure? Why is BBI complicating the gender question? The disbursements to counties are set as minimum which has hit 16% without any amendment to the constitution. The problem to solve is delay in disbursement. On representation if the one man one shilling one vote was the desire then the two member constituency which raised controversy and as abandoned would have been the way to go. The 73 constituencies are another offensive suggestion.
- *The people appear powerless:* There is a suggestion that we cannot change the report and thus will have to live with it. Can over 20 amendments be made by any of the houses of parliament during debate? Should Kenyans reject the whole document if only 2 amendments of 20 irk them? Or pass it if only 3 of the amendments out of 20 work for them?
- *BBI is not everything:* BBI's main agenda is political power and CSOs must not load everything to it but can utilize it to push its agenda. That BBI may sail through is almost given, it's not our process but we can use it to extract our agenda e.g. the commencement of the PBO act.
- *Scenarios in civil society?* I am elated to hear about scenarios in civil society for the first time. Islam analyzes politics in a certain way. The Jewish Bible also speaks to this. There is a way black magic works. I also have had interactions with Maalim Hussein a palm reader who died. Intelligence, scenarios and data are crucial for the work we do. Like witchcraft which summons demons to give them analysis for up to 3000 years, in civil society we don't have trend analysis. We are late with this scenarios. Let us stop looking at BBI content, BBI is about power. We must merge politics of the PBO Act and BBI, this is good witchcraft.

## 1. ASSUMPTIONS SURROUNDING BBI

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

| No  | Issue                               | Opportunities  | Threats  |   |
|-----|-------------------------------------|--|--|---|
| 1   | BBI Referendum                      | <ul style="list-style-type: none"> <li>Status of 2010 constitution maintained</li> <li>The previous landmark reports (Waki, Ndung'u) have been implemented</li> <li>Gender equality will be relooked at</li> </ul>   | The reports, previous and BBI, may not be implemented  |   |
| 2   | Electoral System and 2022 Elections | New electoral team emerged to conduct elections to streamline the commission<br>Boundaries reviewed as per current constitution  | A lot of polarization towards and after 2022 elections as a result of divisions during referendum  |   |
| 3   | State of the Economy                | <ul style="list-style-type: none"> <li>Saved cost of the wage bill</li> <li>Alternative economic proposals made</li> </ul>   | <ul style="list-style-type: none"> <li>Donor withdrawals due to poor state of the economy</li> <li>Potential benefits of the tax holiday lost</li> </ul>   |   |
| 4   | State of Institutions               | IEBC   | Opportunity to reflect of electoral challenges and find better solutions   | Weakened IEBC   |
|     |                                     | County Governments   | <ul style="list-style-type: none"> <li>Opportunity to solidify devolution</li> <li>Increased budget progressively</li> </ul>   | <ul style="list-style-type: none"> <li>Reduced revenue</li> <li>Lost opportunity to increase revenue allocation to the county thus</li> </ul> |
|     |                                     | Judiciary  | Protecting gains made on judicial independence   |   |
|     |                                     | Anti-Corruption  |  | <ul style="list-style-type: none"> <li>More room for corruption</li> <li>Lagging corruption cases</li> </ul>                                  |
|     |                                     | Security Agencies  | Maintained independence of the sector  |   |
| YES | Issue                               | Opportunities  | Threats  |   |
| 1   | BBI Referendum                      | <ul style="list-style-type: none"> <li>Creates a platform for dialogue and exchange for the people and the nation</li> <li>Opportunity to arrive at a common position since the No team is not opposed to the entire document</li> <li>Strengthening governance in the country</li> <li>Increased women participation</li> <li>Expanding representation</li> </ul> | <ul style="list-style-type: none"> <li>The dialogue created can be divisive</li> <li>Cost implication of the referendum will be high</li> <li>There is a likelihood of duplication of roles</li> <li>Unmanageable wage bill</li> </ul> |   |
| 2   | Electoral System and 2022 Elections | <ul style="list-style-type: none"> <li>Gender and social inclusion at political parties</li> <li>review and strengthening of the electoral body</li> </ul>   | Bigger political parties to benefit more than the smaller ones, especially as regards IEBC commissioners   |   |

|   |                       |                    |   |  |
|---|-----------------------|--------------------|---|--|
|   |                       |                    | <ul style="list-style-type: none"> <li>• put more informed leaders in 2022 due to more choices and new energy towards 2022 leading to an emerging new leadership</li> </ul> |  |
| 3 | State of the Economy  |                    | Improved economy due to the reforms implemented   | <ul style="list-style-type: none"> <li>• Economy will be negatively affected if the proposals are not implemented</li> <li>• Bloated wage bill due to increased positions</li> </ul> |
| 4 | State of Institutions | IEBC               | Reviewed and strengthened electoral bodies  | Partisan body with political parties having membership as commissioners  |
|   |                       | County Governments | More funds to the counties thus strengthened devolution   | Late disbursement of funds and poor revenue collection an issue  |
|   |                       | Judiciary          | An accountable judiciary via Ombudsman's office   | Weakened and less independent judiciary as a result of the ombudsman   |
|   |                       | Anti-Corruption    | <ul style="list-style-type: none"> <li>• Strengthened EACC</li> <li>• Reduced corruption</li> <li>• Proper utilization of funds</li> </ul>                                  |  |
|   |                       | Security Agencies  | Strengthened security agencies  | Political manipulation within the security agencies  |

## 2. Closing Remarks

In closing Oketch observed that doing civil society work is not easy but is very worthwhile. We have done things that put us in trouble, court cases etc. Most of what we have achieved are outcomes made possible by civil society which is the arena that discusses values. We must identify what we really need. We must ask the questions where are we now? Politics is war minus shooting, activism is politics and therefore war. This is what civil society misses as our biggest tragedy is that we are driven by emotions, opportunism. Genuine CSO people don't take time to appreciate the dynamics of the relationship between civil society and politics. We are going to be defeated, throwing tantrums won't help. We have nothing in the war chest, this is not an art as we seem to be treating it. Do we ever do analysis to be strategic? Can we disrupt? Can we perform a miracle?



Jacinta Kagai of CCGD makes a point during the Forum

**PROGRAMME****Regional CSO Dialogue Forum - Nairobi****Activity Agenda**Date: 11<sup>th</sup> December 2020.

Venue: Desmond Tutu Conference Centre, Nairobi

| <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>• Opening remarks</li> <li>• Background and objectives of the project</li> <li>• Intended outcomes of the meeting</li> </ul> | Patrick Ochieng         |
| 10.15 – 11.15 | Discussants on the Reform Agenda including BBI Report   | Patrick Ochieng         |
| 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**

| <b>NAME</b>          | <b>SEX</b> | <b>COUNTY</b>    | <b>CONTACT</b> |
|----------------------|------------|------------------|----------------|
| Albashir Mohamed Nur | Male       | Nairobi (County) | 721613421      |
| Josephat Mutua Waema | Male       | Nairobi (County) | 715776524      |
| Esther Mukuna        | Female     | Nairobi (County) | 710362336      |
| Joshua Nzola         | Male       | Nairobi (County) | 724166697      |
| Michael Mburu        | Male       | Nairobi (County) | 723546149      |
| Jecinta Kagai        | Female     | Nairobi (County) | 718048680      |
| Maxwell Mogowi       | Male       | Nairobi (County) | 716933830      |
| John Mwaiseghe       | Male       | Nairobi (County) | 722615378      |
| Tom Okettch          | Male       | Nairobi (County) | 722849120      |
| Dennis Waweru        | Male       | Nairobi (County) | 704103092      |
| Patrick Ochieng      | Male       | Nairobi (County) | 722706800      |
| Ludivicus Omollo     | Male       | Nairobi (County) | 787599520      |