

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



### **Nakuru Regional Forum: 'Warriors protecting the crocodile that will eat them last'**

Hotel Waterbuck  
2<sup>nd</sup> December 2020



## 1. Introduction

### a) Opening and welcome

Session started with a word of prayer and welcome remarks from the Convener, Masese of CEDGG, who in his brief remarks welcomed everybody to the forum. He facilitated the participants to a round of introductions and levelling of expectations following which he introduced the moderator, Patrick Ochieng to share the project objectives and scope of the scenarios study.

### b) Levelling of Expectations

Participants each had a chance to introduce themselves and make a brief reflection on BBI. Majority were keen to find out more about BBI, whether it was necessary and whether its timing was strategic given the COVID context.

### 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 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 fourth regional forum targeting select stakeholders from the Counties of the Rift Valley region.

## 2. Forum Proceedings:

### a) Take on BBI by Nakuru County CSO Network Convener, Oduor

The Convener of the County CSO Network gave some highlights to set the forum rolling by challenging civil society that seemed to be sitting at the fence. “Civil society cannot fence sit, when communities want to hear from us as change agents” he noted. In terms of BBI and his take the Convener noted that BBI had issues both in its process and the content.

- At the moment citizens appear confused about the process following what appears to be the emergence of extremists on both sides of the BBI continuums.
- Like the 2010 referendum the propaganda by the pro and anti-reform groups was laced with propaganda whose noise is what people were fed on especially those who never took time to read
- It is therefore important for civil society to analyze, organize and engage. History has taught us that we have to come up with platforms to discuss and analyze issues.
- Everybody is asking, where is civil society? We are just gossiping instead of pointing out the good the bad and the ugly in this BBI.
- We are not here to build a case for BBI or destroy it. We are here to position ourselves. To recall the basic constitutional principles to protect and uphold the constitution.
- BBI has produced 3 groups the YES, NO and undecided camps as well as process issues. he flagged the following salient issues
  - i. Is the process constitutional? (It is packaged as a popular initiative) but has too much government machinery

- ii. Is the process inclusive? (Who has been left behind and why?) Other feel it has been going on for 2 years so anyone who was interested would have boarded
- iii. Is the timing right? (Do we have a constitutional moment?) How can we change the constitution in the midst of a crisis? Others argue constitutions are ceasefire documents and should solve our problems.
- iv. The proposals contained are contentious from gender equality, structure of government with its mixed arrangement; distortions of separation of powers; unaccountable system of government proposed; interference in the judiciary by the executive through proposed Ombudsman appointment; the additional 70 new constituencies; reforms to the elections management body, referendum financing and purported strengthening of devolution.
- Are we too late on process issues? How do we safeguard fundamental constitutional principles? There is some level of intolerance and bravado in statements such as “nobody can stop reggae, the train has left the station” etc.

#### b) Brief Remarks from Michael Orwa the Scenarios Consultant

- Orwa was happy to be back in Nakuru a place he called home and expressed eagerness to listen and learn from the stakeholders. He clarified that scenarios are not predictions and that his role was to listen to the positions and mindsets that each participant would share.
- He noted the common themes that kept recurring hustlers, wheelbarrow, deep state, system, dynasty, train etc. he checked with the participants how many had children and paid fees. He posed the question, do we ever think of criteria when for example we search for a school for our child? Performance, affordability, location, environment and diet were some examples shared. If this question was flipped to criteria about electing an MCA, Governor, MP or President the answers were not quite clear.
- Trump for example garnered 70 million votes from racists who think that as a value system is okay. How do we treat our elections? Do we take these issues seriously? What questions do we ask? Are we proposing anything? Are we too late? Isn't a criteria helpful when people ask for advise? What problem are we curing? Electoral justice the very reason the handshake took place doesn't appear in BBI. Should we be surprised? It confirms that our votes don't count.
- The truth though is that we have irresponsible and terrible voters. Africa is the only place where electoral processes are uncertain but the outcome is certain as much as the process does matter as Maraga pointed out
- What do you think Kenya will look like in 2030?
- **Some suggestions and outlook of 2030 from plenary**
  - i) Since youth don't take voting seriously, in 2030 only a few will sit and decide for majority as a result of the carelessness of the middle class and the young who don't care about anything.

- ii) After 2027 contested election there will be another BBI
- iii) CSOs and their efforts will bear fruit but the leadership will push back. Citizens will carry the burden of devolution
- iv) Citizens will give up on their leaders
- v) We will have exhausted the railway economy and will be forced to look elsewhere. Perhaps a melting pot of new areas where politics will be subject to the economy and not vice versa as it is now. At the moment politics dictates economy, we should make economic dictate politics.
- vi) Society will start being conscientious of sections within it that are absent or even represent the interests of those absent

- **Asked why they registered for Huduma number?**

- i) Threats that government services would depend on this number in future
- ii) Claims that it would replace NHIF, NSSF, ID etc
- iii) I was forced by my mother
- iv) My son kept asking when I will register
- v) If we accepted Kipande which is colonial why do we have issues with Huduma that is not colonial one participant observed

- This brief ended with the observation that citizens have loyalty and as Kenyans we have no agency and we do nothing about situations
- In conclusion he noted that scenarios are planning tools, making intelligent guesses of what the future will look like and this is informed by analysis. Scenarios help us prepare for risk and to find different ways of responding to today's decisions or lack of them in the future.

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

- *Citizens don't know what they don't know:* We have left the constitution to politicians yet we all have a right to initiate a popular initiative, we need to engage actively but are we too late? We need to open up this reform debate and even pose the question; do we need all the 47 counties? Given the failure of devolution. Many have not read the draft and the 9 issues have mutated to 78 issues. If we read and civil society was active we would make a difference.
- *Covid-19 scatter:* The CSO forum in Nakuru convened and analyzed the 9 issues when they were first mooted and did a memorandum. The group agreed to be proactive but with the entry of Covid we all scattered. This network needs to be strengthened to undertake sustained civic education on BBI. Prof. Kibwana has gone to court to challenge the process, may be this will slow the process a little. Boniface Mwangi and Jerotich Seii have started a campaign and politicians are realizing the CSOs are waking up.
- *Ethnicity ruling the BBI debates:* The BBI debate has taken an ethnic angle as most people in the region associate it with Raila and thus confess cannot vote for it. It however appears no



one is doing anything about the process to the extent that it is likely to pass. In Kericho ‘we can’t do much. People are saying let us not even think about this, most are with the Kingpin’.

- *Fence-sitting has never been our talent:* CSOs have not been fence-sitting rather BBI is led by two politicians. CSOs must shun the feeling that we ‘cornered’ because the referendum process will go to County assemblies and parliament where we can influence them to stop it. We must start a campaign against two time governors who may support because term limits for them will be removed or MCAs who are eyeing the ward fund or youth who will be swayed by the youth commission as folks pursuing self-interest. **“As warriors if things don’t turn out well, it will be worse than 2007”** declared one participant from Baringo
- *Politicians are setting the agenda:* Politicians seem to understand the citizens and are playing them against each other. They are taking advantage of mob psychology, apathy and our knack for associating with a kingpin in each region. Those who don’t align with the current kingpin seem to be benefitting more. We cannot however ignore politics that determines everything. BBI’s communication is convincing people that all their problems will be solved with BBI.
- *CSOs have lost ground:* The civil society lacks the political mettle to engage the two main political leaders in addition to their diminishing oversight roles since 2013. At the national level the sector does not have credible leadership.
- *Of crocodiles and who will be eaten last:* “He who protects the crocodile will be eaten last” Barasa. It boils down to which crocodile do you want to eat you? Raila, Kibwana, Uhuru or Ruto. Where in Africa has the opposition beaten an incumbent? We have been called evil society by this regime. Education reforms were forced through despite opposition by teachers. The country is captured. The sooner Kenyans internalize this and do the right thing the better. Two people are bent on determining the fate and direction of the country, “nchi imetekwa nyara”
- *Kenyans lack patriotism:* BBI claims to be intent to solve the ‘winner takes it all’ but the larger problem may be to fight the ‘politicians takes it all’ behavior. The politicians who are eating the country are ex-CSOs leaders e.g. Orenge and others who already know the workings of civil society thus use it against the sector. They, politicians have found a way around public participation. Are we sure that when we do public participation the issues will be taken into consideration? We are Kenyans until moments defines us. For instance, you are pro-BBI because of where you come from. BBI is not pro-people and majority never gave their views and as things stand may come and pass.
- *Civic space is crucial:* The PBO act would have opened civic space. Politicians don’t want this to be implemented on this ground. We need honest people to lead civic space to ensure its independence.

### 3. ASSUMPTIONS SURROUNDING BBI

It is the year 2025. We are gathered at Hotel Waterbuck 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>• Gender agenda discussion will be restarted</li> <li>• Winner takes it all challenge will be resolved</li> <li>• More resources via the 70 extra constituencies</li> <li>• Fairness of representation</li> <li>• Parliament to enact laws on popular initiative</li> </ul>	<ul style="list-style-type: none"> <li>• More cycles to amend the constitution</li> <li>• Lack of implementation of promises</li> <li>• Legislation of on some of the issues</li> </ul>	
2	Electoral System and 2022 Elections	<ul style="list-style-type: none"> <li>• Sanctity of votes will be offered</li> <li>• Legitimacy and integrity of electoral process</li> <li>• Transparent elections</li> <li>• Strengthened political parties and coalitions</li> </ul>	<ul style="list-style-type: none"> <li>• Weeding out of small parties</li> <li>• Independence of the commissioners is at the whim of political parties</li> </ul>	
3	State of the Economy	<ul style="list-style-type: none"> <li>• Shared prosperity with the bigger cake to share</li> <li>• Inclusivity</li> <li>• Investor confidence leading to jobs</li> <li>• Economy will start to pick up with the government support to MSMEs</li> </ul>	<ul style="list-style-type: none"> <li>• Ballooning wage bill</li> <li>• Debt burden</li> <li>• Less funds for development</li> <li>• 35% of what for the counties?</li> </ul>	
4	State of Institutions	IEBC	<ul style="list-style-type: none"> <li>• Building a more credible institution</li> <li>• Commissioners to be varied</li> </ul>	
		County Governments	<ul style="list-style-type: none"> <li>• More resources for development</li> <li>• More opportunities for jobs</li> <li>• Ward funds will trickle down resources</li> <li>• Increase in county allocation from 15% to 35%</li> </ul>	<ul style="list-style-type: none"> <li>• Level of education of CECs may be low since some will be appointed from the Assembly</li> <li>• Poor oversight by the Assembly</li> </ul>
		Judiciary		<ul style="list-style-type: none"> <li>• Interference by the executive. Judiciary ombudsman may influence judgements thus loss of judicial independence.</li> <li>• Less funding may inhibit service delivery</li> </ul>
		Anti-Corruption	<ul style="list-style-type: none"> <li>• Corruption cases to take a maximum of 2 years</li> <li>• Increased government accountability since cabinet ministers will also be in Parliament</li> </ul>	What happens when the case is not handled within 2 years?

NO	Issue	Opportunities	Threats
		Security Agencies	Involvement of security agencies in the signature collection is already a backward sign with possibility of more political inference in the security agencies
1	BBI Referendum	<ul style="list-style-type: none"> <li>• Strengthened our constitution</li> <li>• Empower independent institutions</li> <li>• Counties would still get more allocation if the constitution is adhered to</li> <li>• We would have reclaimed our country in terms of dynasties vs hustlers</li> <li>• Full implementation of the constitution</li> <li>• Reclaim the issue of losers in election</li> <li>• Amendment of some clauses in BBI for whoever wins the elections</li> <li>• Rejecting the referendum question will further empower the citizens</li> </ul>	<ul style="list-style-type: none"> <li>• Another referendum on electoral system</li> <li>• Blame game starts</li> <li>• Face a threat on the two thirds gender rule</li> </ul>
2	Electoral System and 2022 Elections	Build a credible and manageable system	The cycle of referendum then elections might interfere with the next electoral process
3	State of the Economy	<ul style="list-style-type: none"> <li>• Once the constitution is strengthened, the economy will be better</li> <li>• Current wage bill will be maintained as no extra positions will be created</li> <li>• The economy will start to pick up if the government supports MSMEs</li> <li>• The president will focus on his Big 4 Agenda as a legacy point</li> </ul>	<ul style="list-style-type: none"> <li>• Too much debt by 2025</li> <li>• Tough economic times after referendum and elections</li> </ul>
4	State of Institutions	IEBC	A weak IEBC which will slow down the country's stabilization process Manipulation can happen if the referendum passes
		County Governments	We will have a state that is angry with its citizens
		County Governments	<ul style="list-style-type: none"> <li>• Supports the independence of county governments</li> <li>• MCAs have held County Governments at ransom</li> </ul>



		<ul style="list-style-type: none"> <li>• Currently, counties are less funded</li> <li>• Structures at the county government will be intact and will only be strengthened by 2025</li> <li>• There will be changes in leadership which may bring better leaders</li> </ul>	
	Judiciary		Less funding which hinders service delivery
	Anti-Corruption	After politicians after losing elections will be prosecuted and the issues of 'mtu wetu' will arise	
	Security Agencies		There current involvement in the collection of signatures might lead us back to the colonial era. BBI will pass if this the way.

#### 4. Closing Remarks

In closing the Convener of the Nakuru County CSOs Network urged CSOs to engage with the BBI process and to rise up to be counted. He implored PEN and CSRG to follow up the conversation and ensure we are not by standers in this important conversation.



A Scenarios Consultant Michael Orwa puts Across a Point

**PROGRAMME****Regional CSO Dialogue Forum - Nakuru****Activity Agenda**Date: **December 2, 2020**Venue: **Hotel Waterbuck, Nakuru**

<b>Time</b>	<b>Activity</b>	<b>Person in charge</b>
9.00 – 9.30	Arrival and registration	Ludi/CEDGG Staff
9.30 – 10.00	Welcome and Introductions	Masese Kemunche
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  Michael Orwa
10.15 – 11.15	Discussants on the Reform Agenda including BBI Report	Cornelius Oduor CEDGG/CSO Network
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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