STATE OF CIVIL SOCIETY IN KENYA
Challenges and Opportunities

A REPORT OF CSO DIALOGUES IN KENYA
December 2014

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## List of Abbreviations

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<th>Abbreviation</th>
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<tr>
<td>CBOs</td>
<td>Community Based Organizations</td>
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<tr>
<td>CIDP</td>
<td>County Integrated Development Plan</td>
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<td>CS</td>
<td>Chief Secretary</td>
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<td>CSOs</td>
<td>Civil Society Organizations</td>
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<td>CSORG</td>
<td>Civil Society Organizations Reference Group</td>
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<td>DFID</td>
<td>Department for International Development</td>
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<td>GOK</td>
<td>Government of Kenya</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>INGOs</td>
<td>International Non Government Organizations</td>
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<td>IDPs</td>
<td>Internally Displaced persons</td>
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<td>KANU</td>
<td>Kenya African National Union</td>
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<td>NANGOS</td>
<td>National Non Government Organizations</td>
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<td>NDI</td>
<td>National Democratic Institute</td>
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<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<td>PBO</td>
<td>Public Benefit Organization</td>
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<td>PBOS</td>
<td>Public Benefit organizations</td>
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<td>PEN</td>
<td>Poverty Eradication Network</td>
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<td>PEV</td>
<td>Post Election Violence</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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1. INTRODUCTION

This an executive summary of reports that document views on the current and future state of civil society in Kenya drawn from four regional and three national level consultations including review of secondary literature.

The CSO consultation forums were facilitated by Poverty Eradication Network (PEN) with financial support from The Ford Foundation.

The forums were attended by more than 300 CSO actors that largely represented most civil society organizations including NGOs, CBOS and Faith-Based Organizations (FBOS) from all the 47 counties in Kenya; they also included the academia, development partners and the media.

The Kenyan Civil Society has been billed as one of the most vibrant in the region, employing 350,000 persons, contributing to about 15% of GDP and operating in more than 26 sectors.

Although the sector is credited for midwifing some of the transformative changes in Kenya such as the removal of section 2A of the previous constitutions in the 90’s and ushering of multi-party politics; the passage of the progressive 2010 constitution and the 2013 PBO Act to replace outdated NGO Act 1990 are perhaps some of the most transforming achievements of the sector so far.

Despite these achievements, the PBOs are currently facing their biggest challenge with the state trying to manipulate the regulatory laws with the purpose of controlling it as it happened in early 1990s.

The failures of the state to implement the highly progressive 2013 PBO Act and ill-intended amendments on the law even before it is implemented are perhaps the greatest stumbling blocks that would send a death knell to the sector as a whole. The acrimonious enactment of security laws in 2014 and rapid deregistration of several international and local NGOs send a message to all and sundry that the state is serious on its threats to control the sector.

That is why the CSOs must engage widely to ensure that the PBO law is implemented as it was passed and that all pending ill-intentioned amendments are defeated on the floor of the House or through a court process.

These engagements should include seeking interpretation of constitutionality of the state actions before constitutional offices and seeking intervention by the Supreme-Court if necessary.

Internally the sector is also dogged by many internal challenges among them the declining image and profile.
The CSO Reference Group conference in Nairobi was well attended by CSO representatives from 41 counties. The conference deliberated on the Status of PBO Act and steps need to operation this important law.

of the organizations due to many factors including unhealthy competitions between different actors in the sector, poor accountability and weak self-regulation, declining funding and waning relationships with the national government.

These dialogues were held with the purpose of finding ways of reviving the sector, to a state of influence and respect that was its mainstay in early 90’s.

This report sums up the outcome of the consultations including recommendations and next action points. Detailed regional and national reports are available on request from Poverty Eradication Office in Nairobi.
2. OBJECTIVES AND APPROACH

2.1. Objectives

The objectives of the dialogue processes were;
1. To help the CSO sector to discuss, analyze and come to conclusions on the state of Civil Society sector in Kenya;
2. To identify challenges and opportunities, including threats;
3. To propose ways of re-engaging the sector in the wake of the new constitutional order in Kenya;

The ultimate goal was to come up with a set of recommendations – both short term and long term - that would guide the operation of the sector for the coming years; enhancing its unity, vibrancy, effectiveness and self-regulation.

2.2 Approach

The CSO consultation process was carried out by Poverty Eradication Network (PEN) and supported by Ford Foundation with the purpose of bringing CSO actors together to dialogue around the current and future state of the sector.

The dialogues also fed into the ongoing dialogues by the CSO Reference Group (CSORG) on the implementation of the PBO Act and the shrinking space of the CSO sector.

The regional dialogue forums were held in four regions in Kenya i.e. Mombasa for the Coastal region; Kisumu for Western and Nyanza; Nyeri for Central and Eastern and Nakuru for the Rift Valley. Each forum included two key note addresses – one on national context and the other on regional issues. Thereafter group work sessions formulated key action points and recommendation for each region.

The regional forums were attended by 129 participants (an average of 32 per region).

The documentation process benefitted from national dialogues meetings organized by the CSO Reference Group (CSORG) that included:

1. **A National CSO Conference** held for 250 CSO leaders from all over the country to discuss amendments to the PBO Act 2013. The conference deliberated on the next steps to ensure that amendments to the PBO Act are defeated in the House and that the national government speeds up the implementation of the Act. This forum included recommendation for civil society at all levels to engage their political representatives to vote against amendments and to advocate for full implementation of the Act. The deliberations in this forum are critical in engagements towards an enabling environment in Kenya, particular the implementation of the PBO Act 2013.

2. **A strategic planning retreat** attended by 23 Civil Society leaders in Lukenya Retreat and Conference Center in Machakos County. This forum was attended by key leaders who have been in the forefront of CSO activism since 1990s including Rev. Timothy Njoya, Suba Churchil and Ezra Mbogori among others. The forum discussed content of a strategic plan that should guide its operation and enable it capture and engage on issues affecting the sector on time and not as a response to government or political class agenda. The CSO reference group has in the past operated more like a loose network that only responded to issues on the table e.g. legislation in parliament etc. without
a long term plan that proactively acts on issues before they happen. This forum also dealt in detail on challenges facing the sector at all levels.

3. **An analysis and strategy stakeholder’s forum** held early December 2014 with the purpose of enhancing momentum towards an enabling and accountable national and county environment for PBOs in Kenya. The Forum was attended by 76 regional leaders 30 members from the CSO Reference Group and 14 from the media (7 media representatives on the opening ceremony and 7 during the press conference). The sector aimed to build consensus on the changes it would like to see in the amendments coming to the National Assembly in February 2015 particular on the light of the 54 proposed amendments contained in the Ministry of Devolution/NGO council/ Hon. Moses Kuria Memorandum. The forum was also intended to look at five contentious issues i.e.

1. How to strengthen public accountability clauses in the Act;
2. How to strengthen and encourage local philanthropy, corporate giving and domestic resource mobilization;
3. How to strengthen regulation and self-regulation;
4. To assess the impact of 15% foreign funding cap on CSOs in Kenya and;
5. Whether migration to the new PBO act
should be compulsory or voluntary.

A second most urgent issue was how to ensure that the enabling clauses in the PBO Act informed emerging county laws, policies and procedures towards PBOs to avoid emergence of divergent approaches of regulating the sector by different counties and to maximize the opportunities of devolution to deliver development and ensure democratic governance among other issues.

The workshop was held in a participatory manner and was attended by among others four governors (Kericho, Bomet and Baringo), two CMAs (Elgeyo Marakwet and Mandera), donors and members of civil society.

Opening remarks was made by Hon. Albert Kochei the Secretary General of County Assemblies Forum and Speaker, Elgeyo Marakwet County Assembly. Key note address was delivered by Hon. Isaac Rutto, the chairperson of Council of Governors and Governor, Bomet County.

The two speakers highlighted the important role that governors and county assemblies should play in developing legal instruments that would regulate the sector.

Governor Isaac Rutto made it clear that his council would oppose any amendments that would devalue the contribution of CSO sector to Kenyan development. He promised to work with CSO reference group so that the sector receives an enabling environment to perform on its mandate.

This summary report therefore is based on the following detailed documentations that are available on request from Poverty Eradication Network (PEN):

1. **Reports of four regional forums** that delved into specific regional issues that affect the CSOs in particular regions and proposed possible activities and roles for the civil society sector in general. The beauty of the process is that different regions came up with different issues and it will help the sector to respond more tactfully based on unique challenges facing the sector in each region. These issues are reported under the regional dialogue reports and are available on request.

2. The report of **CSO Reference Group Conference at Panafric Hotel** that looked at the amendments to the PBO Act 2013 and proposed modalities of engagement. Recommendations from this forum will be critical in carrying forward advocacy for an enabling environment in Kenya through the PBO Act and safeguarding against watering down the essence of the law through uncalled for amendments.

3. The report of **CSORG Strategic Planning Retreat** which reflected on wider systemic and national issues facing the sector and proposed action plans and points that would support in regenerating the sector and enhancing its voice and unity.

4. **Secondary information review** on civil society sector in Kenya.
5. **Report from national stakeholders workshop** with 106 representatives from 45 counties held December 10th to 12th 2014 that recommended immediate action for implementation at national level and counties.

The engagement process thus involved more than 300 stakeholders of the sector from all counties and national level. This report therefore largely presents the views of the sector and will hopefully support in building momentum towards a vibrant and well resourced PBO sector in Kenya.

The main objective is to ensure that a true enabling environment is enacted in Kenya through cooperative engagement with various stakeholders: PBOs, National and Devolved Governments, Development Partners, communities and private sector.

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*The CSO Conference on PBO Act held for two days At Panafirc Hotel in Nairobi, brought together more 250 CSO participants to deliberate on amendments on 2012 PBO Act. The conference called for immediate implementation of the PBO Act and gave views on various amendments that the government had put on the table: Ambassador Elkanah Adembo giving his views during the conference.*
3. KEY FINDINGS

The following is the summary of the findings of the consultation forums:

3.1 The State of the Sector

The Civil Society sector is not fully understood in Kenya in its broader perspective. To many persons in the street it is equated to human rights and governance organizations. Although the roles of NGO, CBOs and Self Help Groups are well understood, many people do not see them as part of the civil society. There is therefore need for wide engagement of citizens on what civil society is, what is its mandate vis a’ v is that of the state and what their accountabilities are to the citizens.

Civil society was defined during the dialogue process as:
1. A space or arena within which citizens act to improve the quality of their own lives, that of their families, clans, communities, society at large and/or vulnerable groups within society.
2. Citizens acting individually or together on a voluntary, peaceful and self-determined basis, for the common good and in the public’s interest;
3. Citizens responsibly exercising their fundamental rights of freedom and liberty of assembly and speech in order to contribute to the development of their communities.

The acts of civil society are not new. Many traditional societies did not have a political system; they had no prisons, no police and no soldiers. Every act, even going to war was all by civil society; it was a voluntary action by its citizens.

This definition broadens the scope of civil society to include organizations registered under various acts e.g. NGO Act of 1990, Trusts under ministry of lands, CBOs under Ministry of Social services, Companies Act, Cooperatives Act, market associations, Faith Based Organizations (FBO) registered under societies Act and thousands of other unregistered and unrecognized cultural and pressure groups called ‘green movements” that are held together by loose cultural norms and interests, for example Mungiki.

Certainly, the CSO sector is very old, probably even older than the state. Some forms of CSOs were in operation even before Kenya was declared a state, for example those who established schools such as Alliance High School during colonial and independence era; those started by people like Harry Thuku, such as The Kikuyu Central Association among others.
Much more recently there have been CSO movements like Mwakenya and Release Political Prisoners (RPP). Others like Maendeleo ya Wanawake organization, Green Belt Movement, etc. have been in operation for years.

The sector is thus very diverse and cannot be lumped into one form or structure. They operate at different levels, regimes and even laws e.g. as trusts, societies, NGOs, companies, etc. That is why the PBO Act 2013 is a very important instrument that would create synergy and harmony, by creating a regulating regime that would take care of all organizations in Public Benefit sector (PBOs) if implemented as passed by parliament in 2012 and assented to law by the president in 2013.

Over many years, 80% of organizations in the sector have been guided by the rules and regulations set after the NGO Coordination Act 1990 through which the NGO Council was formed in 1991. The Act led to the formation of the NGO Council as a self-regulator and the creation of the NGO Bureau, the government regulatory arm associated with this legislation.

The NGO Council has experienced mismanagement, administrative and leadership squabbles, which have led to self-seeking and dysfunctional splinter groups. Key actors in the sector attribute these negative dynamics to new and changed environment following the end of the KANU regime in 2002.

The defeat of KANU and ushering in of multi-party politics led to significant migration of leadership out of the CSO sector into the new government and new alignments between players in the development enterprise – the euphoria that accompanies change. The migration led to a weakened sector and it is at this point that the government introduced Sessional paper No. 1 of 2006 intended to change the NGO law and address the challenges the sector was facing.

Cyprian and Hazel take on Reverend Njoya on his assertions that Civil Society Organization that provide charity and humanitarian response are 'mopping up what the state has failed to deliver and in actual becoming part of state machinery.' Instead CSO should hold government accountable although they might be forced to do service delivery once in a while.

Rev. Timothy Njoya and Regina Opondo during strategic planning retreat. "Being Sonic is the ability to listen both to your audience and also the future. We need to look ahead and find out what Kenya will need 20 years from now. How will commons citizens, and leaders be behaving. This will determine the Actions that we will take now."
In 2009 the CSOs saw this as an opportunity to engage and introduce a more progressive law in line with the new constitution. The sector engaged widely in its development of the Act leading to the approval of the progressive PBO Act that was passed into law in 2013. This Act has however not been implemented 24 months later and several ill intended amendments are in the offing, which the sector must engage widely to prevent their passage into law.

Although at present there are efforts to reform the NGO Council, its non-functional status is a reflection of the disunity that has characterized the sector for many years. Some observers think it is a window that negative forces may have used to further disorient the sector.

The implementation of the PBO Act would however bring this to a closure, with the establishment of a representative Federation as provided for in the law.

3.2 Achievements of the Sector

The Kenyan civic society has been described as one of the most robust in the continent. It cuts across more than 26 sectors and contributed to 15 per cent of GDP in 2012. It employs over 250,000 staff and have a budget of over 80 billion Kenya Shillings.

The sector supports livelihoods of millions of citizens especially in very poor regions and counties. Many people in North and North Eastern Kenya would not access basic services e.g. health, water and sanitation, education and food without the help of civil society.

The size of the sector has ripple effect on several sectors such as insurance, banking, agriculture, health, education that provide various services to the PBOs.

80% of the organizations in the sector are established in compliance with NGO Act, up from 67% in 2011.

The sector has performed relatively well despite of waning influence that was its mainstay in the 90’s and early 2000’s. The public perception of sector is generally positive with recent surveys indicating that more than 70% of respondents trusted CSOs (National Democratic Institute (NDI) Survey, July 2014).

CSOs are credited for bringing some of the boldest changes in Kenya. Key among these includes:

1. The enactment of 1990 NGO Act that the CSOs worked so hard to make it appropriate and enabling when the state wanted to use it to stifle the sector. Eventually a positive law was passed in 1992 after active agitation by CSOs. The Act has more or less provided an enabling environment for registration and regulation of more than 80% of the organizations despite challenges of capacity facing both the NGO coordination board and in-fighting within NGO councils. The sector would not be where it is today if it were not of the positive aspects of the law;

2. The CSO movement was critical in the removal of single party regime of KANU and ushering in of multi-party politics in Kenya in the 1990s. In fact some of the CSO activism code-named ‘Ufungamano Initiative’ were the bar-holder of campaigns to remove section 2A of the constitution that barred multi-party politics in Kenya. Eventually this section was changed leading to removal of KANU regime through an electoral process in 2002. The CSO campaigned and drummed support for the new progressive constitution that was passed with overwhelming majority in 2010. The passage of the constitution was a critical milestone that many in the sector had worked tirelessly for more than 20 years. Its passage has been deemed as the
Poverty Eradication Network (PEN)  

CSO Dialogue Report  

The greatest “bloodless revolutions” in Africa. The law provides space and protects rights of citizens including affirmative action to minorities, women and persons with disabilities. There is even a greater need for engagement in order to hold the state accountable for its implementation. There have been threats to amend the constitutions even before the ink dried and Civil Society has critical role to play to ensure that this progressive constitution is allowed space and implemented fully.

3. The new progressive PBO Act 2013 is also a product of civil society. The Act provides a bold step forward from 1990 NGO Act if it is fully implemented as passed in 2013. The law is in line with provision of the constitution and creates space for self-regulation and harmonization of the wider CSO sector unlike the NGO Act that only covered organizations registered under the NGO Act. The challenge is that it has not been put in operation and proposed amendments by state operatives (see challenges) are likely to make it less effective and less enabling.

Mapping the Future: Cyprian and Ezra discuss the way ahead for the retreat that was to deliberate on the future of Civil Society in Kenya. Both Cyprian and Ezra and others in the retreat have been active in the sector since the 1990’s. The CSO reference group, a loose network of civil society organizations has supported organizing CSOs to work together towards various agendas including the enactment of 2013 PBO Act.

Irungu’s on the Future of CSO Reference Group

1. Key question is how do we help our sector see the new era of CSOs; to support citizens to take up their rightful place in demanding for their rights from duty bearers?

2. The issue about values and leadership among CSOs are critical and we must address them if we have to be an effective sector

3. How do we bring the vibrancy of the sector and its commitment to transparency and accountability not only to the sector but to citizens and our country as a whole?

4. How do we hold the state to account and how do we strengthen partnership with devolved governments without watering down our watch dog roles?
3.3 Challenges Facing the Sector

Findings on the state of civil society varied from region to region as informed by culture and traditions as well as historical and current trends. The following are general trends and analyses:

1. **Critical highlight was the shrinking civic state for CSOs, media and citizens in general.** To many participants the days of opulence and influence ended with the 90s and early 2000s. These were the times characterized by intense activism against oppressive regime of KANU. Availability of donor funds, focused and boldness of CSO leadership as well as limited restrictions to activism spurred a vibrant sector in a state never seen before. It is a state that the CSO Reference Group referred to as the era of **Jienjoy** (era of opulence). CSO had influence on matters of the state, acted together as a pressure group and brought changes to government and society at large.

   However this state of **jienjoy** did not last long. Come multiparty politics, as the fruition of what CSOs had fought for and many in the sector felt that they had arrived and several key activists left the sector to join government. This left the sector somehow moribund without critical
muscle and leadership that pushed for changes in the 90’s.

As a result of this and the infiltration of the sector by lower quality and political savvy leaders ready to make a kill for themselves introduced hitherto unknown rivalry between CSO leaders and competition between progressive CSOs ideals and negative individualistic goals.

The sector slowly waned in influence and clout. Up to-date the sector lacks a credible central coordination body as there are three that purport to represent it. As a consequence, the current state of civil society sector was defined as state of Jitolee (volunteerism) tending toward state of Jihu-rumie (sorry state) unless interventions are taken to reverse the trend. These dialogues will hopefully present actionable points that would prevent the sector from sliding to this sorry state.

2. **Credibility issues also confront the sector on many fronts.** Not only have CSOs lost voice as they undercut each other at national and grassroots level but individualistic elements have also infiltrated the sector with dozens of brief case NGOs that are established for personal gain. Politicians, religious and ‘terror’ groups have also set up CSOs to legitimize their unethical practices and as vehicles to achieve their goals, while well connected individuals have them as their business ventures (milking cows).

It is thus becoming harder to provide the alternative voice that was the domain of the 90s’. The question for many in the sector was: “how does the sector highlight ills in government while they themselves are guilty of the same or even worse diabolic deeds?” The sector cannot be an authoritative voice unless it brings back the standards and values that it stood for in earlier years.

3. **Capacity of the sector is wanting in many areas.** There were views that the sector no longer has leaders who work for a cause as it was in earlier years instead it has become a place where people work just for a living (like any job). With the departure of past leaders to political or government positions, the challenge that begs many is how to breed a new cream of leaders ready to work for a citizens cause and for the sector, who can be bold enough to speak out and challenge negative forces when need arises. Another capacity challenge is that many workers in the sector particularly those at the grassroots do not have skills and know-how to become effective agents of change. Lack of these skills impedes their ability to

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Cyprian and Hazel of CSO Reference Group laying out the trends in Civil Society during the group strategic planning retreat in Lukenya in September 2014
compete effectively with larger players in the sector; particularly because they compete for the same funds with larger and well-heeled national and International NGOs. The challenge is apparent when INGOs and NGOs are compared and when CBOs and NGOs are put together.

4. **Dimming Financial Base for the sector**: As said earlier, the days of opulence, influence and well-funded sector looks like dimming fast. The sector is facing a serious financial crunch as donors have been forced by economic conditions in their countries to reduce aid. Further accountability issues within the sector, capacity and leadership as well as the branding by state operatives of CSOs as “supporters of terror” weaken their bargaining positions with Government, and development partners.

5. **The ‘big brother/sister syndrome’ was cited as a problem from grassroots dialogues**: For a long time the CSOs in the grassroots have mainly looked upon the Nairobi based national CSOs for direction on the reform agenda even on issues affecting the local population such as the IDPs, Peace Building, conservation, PBO Act amendments among others. This syndrome has negatively affected the ability of the locally based CSOs to cultivate a culture of self-drive and initiatives in response to the reform agenda. The overbearing nature of the national/Nairobi based CSOs has also occupied the space of the regional CSOs in form of skewed programme implementation and partnership agreements creating dependency syndrome by
smaller CSOs. It is critical to develop mechanism where this relationship becomes mutual and support the growth of the sector instead of constricting it.

These challenges between different players have created a **widening gap between various members of the sector**, for example between International NGOs (INGOs) and National NGOs (NANGOs) and between national CSO and grassroots CBOs.

Further there is existence of a large portion of the sector in unregistered CSOs also called ‘green movements’ that are held together by loose cultural norms, values and systems. **The activities of these groups are not formally recognized when analyzing civil society in Kenya.** Thus they remain invisible and do not attract any support from any quarter. The green sector sometimes **has a lot influence on citizens** and their activities can have far reaching implication as it needs been witnessed with Mungiki, Sabao Land Defense Forces (SLDF) and several other vigilantes at the Coast (MRC for instance), Nairobi and Western provinces.

The challenge is **whether it is possible to bring all these varied organization and interest group into one CSO coordinating mechanism.** A bigger ques-

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*Discovery of Mineral wealth—it is bane or a boon? Many are of the view that it may create weakened civil society and make the state less accountable to its citizens*
tion begs whether it is possible to regulate the green movements, many that are classified as illegal and some guilty of extreme human rights violations.

6. Of course the challenge exists even with coordinating bodies. Most umbrella organizations such as NGO councils, CSO reference Group has been branded as being ‘elitist’ and urban based. Critical thinking and actions are thus required to reconcile their varying needs; particularly how to coordinate them as one vibrant sector while making them fully responsive to their key audience – the citizens.

7. Further, there is challenge in terms of mandate of Civil Society Sector Vis a’ vis the state i.e. what CSOs should and should not do. Whether they should “mop up” the failures of the state by providing services where the state has failed to do so, as alluded by Rev. Timothy Njoya, or carry out activities that hold the state to account? There was consensus that the sector should be engaged in the later (holding duty bearers to account) but more and more we see the sector mopping up the failures of the state and forsaking its primary responsibility of supporting citizens to demand for their rights from duty bearers. It was however agreed that helping the state and communities in service delivery and humanitarian response should be done where it is essential while engaging in critical role of holding duty bearers to account.

8. Being associated or blamed as agents of ‘hostile’ nations also weakens the perception of the sector. In fact there are serious indications that the state is trying to use this branding to introduce punitive legislations through the amendments of the PBO Act. There were suggestions during the consultation that the government had already written to donors and embassies with allegations that the sector is supporting terror.

This link to terror is creating serious apprehension, and could be used as a means to silence legitimate voices through the amendments of the PBO Act. To support this view, the state closed down 500 CSOs for failing to make returns to the NGO board and a few because of possible links to terror in December 2014. The threat to the sector is real particular with the signing of 2014 security bill into law. This was a wake up call and the sector should use any means possible to resist the amendments and push for full implementation of the Act.

9. Another apparent observation from this area is the ongoing ICC cases against the president and his deputy that have put the sector in bad light as they are viewed as the ones responsible for the predicaments facing the two. In fact it was becoming more of a security risk to advocate or highlight human right violations in both national and county governments because one would be viewed as anti-government and therefore, enemy of the state depending on which side of opposition poli-

Dialogues at the Coast were among the most heated and many issues were raised that included unease between mainland and coastal people, marginalization of the region, land and effectiveness of the sector at the coast.
tics one belongs. As a result, freedom of expression and space for engagement for civil society is seen to be shrinking by the day. The ICC cases have made the suspicion between CSOs and government worse, with CSOs being viewed as witch hunting local leaders on behalf of foreign governments. Thus the feelings of insecurity, victimization and persecution were apparent during the consultations.

10. The challenges facing ethnic minorities were also highlighted. These include Ogiek, Ilchamus, Nubians, Sengwer, El molo and the Endorois among others. These also include minority tribes and races where one tribe or community is dominant. Examples are Asian and whites in many counties, Lou ethnic minorities in Central Kenya and Kikuyu in Lou Nyanza etc. These communities continue to face marginalization despite the constitutional affirmative provisions for their consideration in socioeconomic and political processes within the national and county government framework. What voting rights do Asian/White communities have for instance in counties where they live; have counties put in place mechanism to involve minorities? The CSOs in the regions have a unique opportunity to advocate for the rights of the marginalized communities, conservation of their unique culture and heritage and their inclusion and involvement in day to day decision-making in counties and at national level.

11. Engaging the impassive Middle Class was mentioned as critical in mobilizing citizens. One challenge facing the civil society is the apathy and non-engagement of the middle class in the country. How can this important class be transformed as a force for change and empowerment of communities and citizens? It was clear that long as the middle class continued with their apathy; i.e. “My child goes to a private school, I use private hospitals, I belong to private membership clubs etc.” Kenya won’t achieve real change for its citizens. Clear actions and programmes must be designed to raise the consciousness of the middle class on wider societal needs and issues and the implication on non-involvement and apathy. The upper class on the other hand has nothing to lose; they have the money and the resources, the middle class are committed to their lifestyle; their jobs, their mortgages and their “false” comfort zones. However, both the middle and upper classes will pay attention if what they have to protect (status quo) is disturbed. On a positive note it
was mentioned that during elections, the middle class is often engaged in guiding people in as far as who is to be voted for. People in the rural areas listen to the people from the city and follow their instructions, after all many depend on them for livelihoods and sustenance.

12. **The social media can be a powerful tool to engage the middle class** but it also has risks. Revolutions in the Arab states were caused by social media and there is need to be careful on how to harness the power of social media. Obama won his two elections by using social media to engage his critical audience – the young and learned. The middle class thus are enlightened and have tools that can facilitate wider mobilization of citizens. These include social networks, ICT tools and knowledge and money. However if social media is to work for the civil society then there has to be a strategy for sanitizing it.

13. **Fighting the ethnic fiend**: It was also noted that tribalism was the number one threat to devolution and the achievement of civil rights in Kenya. How do we help people to understand the need to protect their rights and to agitate when need be despite coming from different communities? Today it is easy to conclude citizen’s views on any political item by the community or ethnic group that they come from. People from coast are assumed to stand for and support issues of citizens at the coast; the same with people from other regions. Yet this is not wholly true. Some of the vibrant leaders in sector have supported broader national issues without regional or ethnic biases. CSOs vision should be for a united, cohesive nation that stands for rights of all citizens. There were also questions as to whether the media (FM stations for instance) was being used to threaten our vision as a cohesive nation.

14. **Potential opportunities from mineral wealth have implication on civil society.** With the recent discoveries of oil and natural gas in many parts in Kenya, there is already indication of a looming crisis pitting local communities and the international prospectors over sharing of the resources accruing from the oil, various minerals and geothermal. There are also concerns that without progressive and comprehensive legal framework to guide the exploration and ultimate extraction, the local communities are likely to lose on the potential development opportunities presented by the recent discoveries.

The CSOs should develop capacity to provide oversight on the formulation and execution of exploration and drilling agreements involving the government and the multi-national oil companies. The likelihood that the government would be less transparent once it harvests and sells mineral resources as it will rely less and less on taxes from citizens were also mentioned. This is often a general trend globally as it makes the state less accountable to its citizens.

This is a summary of challenges, a lot more exist in individual regional reports but the above sums unique challenges facing the sector.

Sophie From-Emmesberger, the Ambassador for Finland and also the co-chair of the Development Partners Group made her presentation on behalf of the Development Partners.
4. RECOMMENDATIONS

Among the key recommendations as concerns the state of civil society included:

1. **Planning ahead and being proactive**: The need to plan ahead, to listen to the future and also to the citizens and proactively enact future scenarios and provide means of managing them when they arise. There were strong views that the CSO sector has been reactionary to the political class instead of developing its own action oriented agenda. Consequently, the CSO Reference Group is launching a strategic plan to guide CSO activities with the hope of initiating active implementation in 2015. The vision of the plan is:

   I. Enabling policies, laws and practices enacted and embraced
   II. Image of the sector positively transformed and;
   III. Collaborative bridges built with National and County Governments, Private Sector and Faith based communities

Among the key achievements are:

- To have 1,000 PBO/NGOs joining the CSORG with 200 adopting public accountability standards and norms consistent with PBO Act;
- CSO Reference Group recognized as a powerful representative and standards self-regulatory forum while member organizations attract greater funding and top level talent.

This plan is critical for wider engagement of the sector and needs support as it seeks to engage the CSOs across the country including the counties.

2. **Structure and Coordination**: Structurally, the CSO Reference Group proposed to move away from a loose network that has been accused of being ‘elitist’ to a vibrant network with roots at counties, a General Assembly elected from all 47 counties and have representation from National and International NGOs; an elected board and an empowered secretariat with active programmes. On this recommendation, the group proposed to expand its membership from just above 100 to 1000 in three years, mostly drawn from grassroots constituents including CBOs and other unregistered CSOs. The group proposed to use the platform to

*Peter Machithi of Kivuli Cha Haki makes a key note presentation where he highlighted among others the existence of CSOs that are considered illegal and are unrecognised. They don't receive any support from any official quarter e.g. The Mungiki and others that he referred to as “green movements”*
support the establishment of FBO federation once the PBO Act is implemented.

3. **Of course the establishment of CSO Reference Group does not solve the problem of disunity in the sector.** The rival NGO councils are still in operation and so long as there is wrangling, the sector would still be prone to manipulation and misinterpretation. The enactment of PBO Act should in essence end this as it provides for formation of PBO Federation as a coordinating and self-regulation arm of the sector. However delay in implementation of the Act and challenges of proposed amendment are likely to keep the sector in limbo for long. It is critical that all players in the sector marshal all resources possible to ensure that the PBO Act is implemented without further delay and without major amendments. It is proposed that the CSO Reference Group continues to mobilize the sector to ensure that its voice is heard and that it presents credible proposals on the formation of PBO federation as a replacement of the NGO councils.

4. **Capacity Building:** In addition, the apparent vacuum in CSO leadership that was occupied by activists like Kibwana, Njoya, and Wangari Maathai at the national front needs to be filled by a new breed of leadership. There was general consensus that the sector is seriously lacking this vital capacity and the CSOs mooted a possibility of establishing a CSO Leadership Institute. The Institute would offer regular courses, coaching
A participant in Kisumu presents her group views and recommendations. The forum in Kisumu was vibrant and controversial as that of Mombasa. Participants in both regions expressed fears of persecution by the state and how it would be difficult to carry out old time activism in the current setting.
and mentorship on CSO management, leadership, citizen participation and value based programming using various mechanisms including online courses, coaching and support, regular training and conferencing.

5. Standards and Certification: The need also to strengthen standards and values that the sector would assess itself by was a proposal both at grassroots and national level. It would be unreasonable to charge and accuse government for lack of transparency and accountability while the CSOs suffered the same or worse sins. For this, the CSOS proposed to strengthen the functionality of CSO certification organs such as VIWANGO. The CSO Reference Group on the other hand has come with a CSO Charter and is advising its members to assent and conform to it with a target having at least 20% of its members fully complying with the standards by 2019. The standards and self-regulation mechanism proposed by civil society should help the sector weed out the evil and corrupt in their midst. Only those that adhere to values and certification standards should qualify more for more support as they would be viewed positively by the public, government and development partners.

3. Resource Mobilization: The CSOs clearly understood the lack of resources, particularly funding to engage and mobilize civil society and citizens was a critical need. As a result, there were pledges by partners led by Diakonia to continue pooling resources including volunteerism to support start up activities. The outcome of these CSO consultations should lead to a development partners’ conference in 2015, with the aim of raising adequate funds to achieve the milestones within CSO Reference Group strategic plan.

The sector also needs to think widely on how to strengthen the diminishing resource base for Civil Society Sector in general especially from national and grassroots fund raising initiatives. This will depend largely on branding and how the sector is perceived by the public and local philanthropists. Important to this also is the need to engage development partners on the importance to pool resources and create basket funds for civil society activities in Kenya as well as harmonizing relationships between bigger members of civil society and smaller grassroots organizations with the aim of avoiding unhealthy competitions and creating synergies.

4. Advocacy for full implementation of PBO Act 2013: Full implementation of 2013 PBO Act is prerequisite of all the sector seeks to achieve. As said earlier the Act is progressive law from 1990 NGO Act as it:

I. Enshrines self-regulation, disclosure and public accountability;

II. Creates a single identity and framework for voluntary migration of all public benefits organizations;

III. Integrates the development, democracy and governance thematic sectors;

IV. Encourages corporate and individual giving,
tax-exemption and domestic resource mobilization;

V. Establishes new PBO Authority, Federation, Dispute Tribunal and Self-regulatory groups with parliamentary oversight;

VI. Establishes an administrative and regulatory framework within which public benefit organizations can conduct their affairs and for connected purposes.

The challenge is that 24 months on, the Act has not been commenced although it was signed into law in 2013. Further amendments to the Act have shown indication that the government is not keen at implementing the Act the way it was approved. The government has published two major amendments to the Act since it was passed into law, the latest amendments (October 2014) being the most acrimonious.

I. **October 2013: Miscellaneous Amendment Bill amendments** deemed counter to the original intent of the Act but the amendments were withdrawn.

II. **October 2014: NGO Council and the Ministry of Devolution and Planning introduced new amendments via memoranda by Moses Kuria with 32 of the 54 proposed amendments** being deemed as harmful and change the letter and spirit of the PBO Act. These amendments:

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*Agitated Dialogue during break in Nakuru for Rift Valley Civil Society Organizations. The dominance of former president Moi’s politics for 24 years as president of Kenya will preoccupy Rift Valley for many years to come. During Moi’s regime, the civil society in Rift Valley was complacent and not active in agitating for the second liberation as in other regions of the country.*
There is need for critical engagement of the wider civil society both at grassroots and national level. The CSO Reference Group has put the process on red alert as one that needs immediate and urgent action and is engaging regularly with wider stakeholders including the council of governors, who have voiced strong opposition to the amendments of the Act and the process that the Cabinet Secretary Devolution and planning has used to consult on the proposal; it further seeks support from County Members Assemblies to ensure that the ominous amendments proposed are defeated. Urgent and critical support is required to the CSOs to mobilize civil society and other stakeholders, to engage in advocacy and awareness creation to defeat the amendments and to bring the law into full operation.

9. **Branding and Visibility of the sector**: The sector is being misconstrued and misunderstood by the public and political leadership because it does not adequately profile itself and its activities. Some of the misconstrued views of CSO include:

- CSO played a big role in the predicament of the President and his deputy in Hague based ICC. They are thus viewed as the enemies of the state and hence the people and it becomes very difficult to implement an active advocacy agenda especially in Rift Valley and Central Kenya where the two leaders come from as the public would not receive it positively.
- CSO movement is equivalent to human rights organizations while NGOs, CBOs, Trusts and religious institutions are not CSOs.

Hon. Nyokabi, a past CSO activist, acknowledged that the most threatening amendments in the PBO Act is the 15% cap on foreign funding and the requirement that all funding be channelled through the PBO Federation. She called for CSOs active engagement in the legislative process.
• Poor reporting of CSO’s activities was mentioned as contributing to poor image. It was said that CSOs are good at upward reporting to donors and development partners and very poor towards the grassroots accountability. This is one of the weakest blocks that should be addressed through capacity building process cited above.

• CSO roles—that is service delivery against right based agenda – whether Civil society should “mop up” what the state has failed to do, hold the state to account or both are critical milestones of branding

The sector therefore needs to strengthen capacity on these issues with an aim of ensuring that the sector fully understands itself (its values, roles and responsibilities) and that it disseminates this effectively to its audiences at large e.g. donors, development partners and the public.

10. Security was mentioned in all regions as one challenge limiting old fashion activism in Kenya. At the Coast many NGOs were said to have run away from the real issues facing citizens because of fear of getting in trouble with the law. Although the number of CSOs at the Coast has grown tremendously the sector shies away from addressing real issues facing citizens due to security concerns. Players in the sector are viewed as suspects and there is even suspicion amongst different players in the sector, with some viewing others as suspects. There is also a lot of dishonesty with some teaming up with political parties and some are even being given offices and positions within political parties and within county governments. A big question during the consultation was: “Is there a way that CSOs can come together and strategize the way forward afresh since threats have always been there even before independence? Can we protect each other against a ‘common opponent’ as used to happen before instead of branding and suspecting each other?” Not working together as a sector was said to be creating serious security risks to individuals who are bold enough to stand up and organize activities against human rights violations.

11. Engage Council of Governors and County Assemblies Forum: The last CSO Reference Group forum attended by governors and county assembly members reiterated the important role that these organs of devolution would have on citizen’s agenda. It was clear that involvement of these organs would harmonize and provide enabling environment for PBOs at county level and help in engaging national government on governance and legal issues. The governors are becoming a critical stakeholder in the push for the implementation of 2013 PBO Act and the defeat of ill-intended amendments. The CSOs should therefore put in place plans and resources to engage these county level decision making forums. So far, both forums have promised support (see statements at the end of this report)
5. CONCLUSIONS

The success of the CSO sector will be determined by the way it engages with the national government and works with county governments in the interests of the public. The CSO sector has succeeded in pushing for reforms when they come together and it has demonstrated that it is possible to be the alternative voice when it comes to reforms and citizens agenda. It has midwifed some of the challenging reforms in Kenya, at the cost of tears, wounds, citizens’ lives, image and profile of its leaders.

The sector believes that it can midwife again especially on broadened and enhanced scope provided by the new constitutions with two levels of governments to hold account for commitments on citizens’ rights and service delivery. The space to engage is widening (both vertically and horizontally) and greater energy is required.

The CSO Reference Group has demonstrated through its recent engagement that the space to engage exists especially through various cadres of political leadership – all the way from grassroots to the national level. The CSOs need to capture the moment, to broaden its scope from national level to the grassroots; to build adequate capacity and hold itself to account through a transparent and accountable certification process; to be vibrant in mobilizing citizens and engaging leaders and above all to speak with one voice. One critical milestone that will provide enabling environment is the full implementation of 2013 PBO Act, without which little will be achieved.
Development partners must come on board to support this process with technical assistance and the establishment of basket funds or pooled resources that can be administered centrally by capable actors in the sector to benefit citizens at all levels.

Further the structures of engagement proposed by CSO reference group with county and national level assemblies and voting structures for representation needs support to enhance coherence, representation and networking within the sector.

The CSO Reference Group strategic plan is a critical agenda item that requires immediate support as it seeks to revamp the sector with recruitment of 1000 CSOs by 2020; with 20% fully adhering to standards and values.

It is our hope that what the CSOs are coming up with will echo the voice of Ezra Mbgori, the co-chair of CSO Reference Group, who said: “What we are coming up with in Kenya will be a trail blazer that will inform similar processes across the region”

This we hope and this we must.

Sammy Keter

Forums' rapporteurs listening in at the Rift Valley CSO forum
6. WHAT THEY SAID—COUNTY GOVERNMENTS

STATEMENT BY HON. ISAAC RUTTO, CHAIRPERSON COUNCIL OF GOVERNORS

On behalf of my brothers, His Excellency Governors, I would like to take this opportunity to thank the CSO Reference Group for this invitation to dialogue between Civil Society and county Governments. The Council of Governors has a mandate to consider matters of common interest to County Governments. A key common interest is the uplifting of livelihoods for all Kenya in accordance with the constitution. In this regard, the council recognizes the importance of Public Benefit Organizations (PBOs) the overall development of social cohesion, economic growth and good governance in the counties.

PBOs play a critical role in the provision of primary health care, education, water and other social rights. PBOs have also been playing an active role in civic education and public participation of citizens in governance affairs. These are efforts that are essentially aimed at complementing the work of County Governments in the same areas.

In the light of the above, the council appreciates the role PBOs play in Kenya today and it is for this reason that the council raised an agenda on the PBO Act in the last summit held in May (2014). A Joint task force has been put in place by the CS Ministry of Devolution and Planning without consultation with the Governors.

We would like to inform you that we have raised issues with recent appointment of a Task Force composed of seven members who are expected to monitor the proposed amendments of the Public Benefits Organization Act 2013. We believe that the establishment of this Task Force was done in absence of county and other stakeholders’ consultation.

I would like to note that the Council is committed to support the work of PBOs across the 47 counties. I believe that County Government and Civil Society can explore ways of creating synergy in civic education and public participation for the citizens.

I thank you again and the counties look forward to forging partnership with yourselves in this transition process.

Hon. Isaac Ruto, Governor Bomet and Chairperson, Council of Governors.
STATEMENT FROM COUNTY ASSEMBLIES FORUM

The County Assemblies Forum exists to bring together the members of County Assemblies on common interest. We are responsible for making laws, exercising oversight over the County Executive committee, receiving and approving plans and policies for development.

The Public Benefit Organization Act of 2013 is critical for the role and impact of PBOs in our counties. Any amendments to the PBO Act need to be considered in the light of whether they strengthen the abilities of the counties to receive the development assistance they require to deliver on County Integrated Development Plans (CIDP).

It is important to the County Assemblies Forum that every shilling raised in the name of development and for strengthening governance is spent well and transparently.

Most County Governments and Assemblies are exploring different ways of working with PBOs. We do not have guidelines for this and we would welcome collaboration with CSO Reference Group on how best to create a county enabling environment, planning alignment and oversight for the performance of PBOs at county level.

As the Secretary General, I would be happy to propose a session on the PBO Act during the next Forum to discuss the Act and its implication to the counties.

Hon. Albert Kochei, The Secretary General, County Assemblies Forum and Speaker, Elgeyo Marakwet County Assembly
9. WHAT THEY SAID—CSO MEMBERS

The entire process of gathering views from civil society was exhaustive. It received contribution not only from regional forums but also ongoing consultation by the CSO Reference Group. The feedback from these forums enriched the process tremendously.

The following are views of CSO actors on engagements so far:

**Humphrey Buradi:** “The process has actually demonstrated what many people have been saying about the CSO Reference Group. We have done a thorough analysis of CSO environment and I am sure that so much will be achieved from this process. We have invested our resources in the right direction..”

**Lucy Githaiga:** “I am very excited about the achievements. This process has given me a very clear vision of the future. It is good to be in an (exercise) that is setting history. We have made a very compelling mission for ourselves.

“We bring various strengths to the table as members. Diakonia is committed and will continue to support the process. We need to bring others on board. Once we have our strategy we can also organize for a partners conference to see who can support us.”

“... at personal level I have been thinking of an NGO capacity building institute and I am happy that the idea is beginning to come together through this process”.

**Peter Irungu:** “I am excited and happy that there are people who are committed to the process and are standing for Kenya. That we are looking at democracy, peace and development based on shared values and ethical practices...”

**Ezra Mbogori:** “I am happy about the momentum from 2009 when we started the process. Membership to CSO Reference Group has been voluntary and selfless. From 13 members to more than 100 now provides me with sense of pride.

“We need to work hard to get rid of elitist image that many in the CSO sector have about CSO Reference Group as an “elitist gathering”. We have learnt that we have to be smart and many times political and this process is a key milestones. What we are coming up with in Kenya is a trail blazer that will be used as an example across the region.”