

PEN ANNUAL REPORT 2018

Enhancing Space for Citizens and Societies in Kenya

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Lay out and cover design
Sammy Keter, 2019

About PEN

We are an NGO based in Kenya supporting development initiatives in civil society strengthening, democracy and governance and in environment and natural resources.

Vision:

A society where all people have access to a life of dignity, devoid of absolute poverty

Mission:

To create wealth and prosperity in Kenya through value driven programmes **that enhance capacity and sector coordination, sustainability and citizen's voices at all levels**

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LIST OF ABBREVIATION

| | |
|--------|---|
| AHADI | Agile Harmonized Assistance for Devolved Institutions |
| CDTF | Community Development Trust Fund |
| CIDP | County Integrated Development Plan |
| CS | Civil Society |
| CSOs | Civil Society Organizations |
| CSRG | Civil Society Reference Group |
| FH | Freedom House |
| ICNL | International Centre for Not for Profit Law |
| MACSON | Makueni Civil Society Network |
| NARC | National Rainbow Coalition |
| NED | National Endowment Fund |
| NGO | Non Governmental Organization |
| PBO | Public Benefit Organization |
| PEN | Poverty Eradication Network |
| PWDs | Persons With Disabilities |
| TWG | Technical Working Group |
| USAID | United States Agency for International Development |



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FROM EXECUTIVE DIRECTOR

Thank you for getting time to go through our report. We trust that the information contained herein is comprehensive enough to enable you have a grasp of what PEN has been up to in the past year.

2018 was a year of mixed fortunes for civil society and citizens of Kenya in general. The country ended 2017 with bitter conflicts over contested presidential elections that left the country more divided than ever.

The potential of regaining peace and normalcy dimmed further at the start of 2018 with two candidates sworn in as presidents – **one as the official president and the other the “People’s” President - two scenarios that literally split the country right in the middle.** The “resistance” movement built by opposition as a consequence was seriously building momentum and there was no telling how it would turn out in the long run.

Then the March 9th **2018 Building Bridges for Unity Initiative, popularly termed “handshake”** between the President Uhuru Kenyatta and Raila Amolo Odinga, happened and surprisingly, the country returned to normalcy the next day; an indication of the extend political leaders, particularly Presidential candidates, have a sway on peace and stability in Kenya.

Although the PBO Act was not commenced, a critical milestone was reached in 2018 to initiate dialogue on the stalled Act with the NGO Board and other actors initiating series of discussions. For the first time, the government came back to civil society with a request for dialogue and the NGO Board went on its own way to engage and get feedback from citizens and civil society on the proposed amendments.

The Civil Society through CSRG has set up a Technical Working Group (TWG) to study proposed amendments and has already given feedback to the NGO Board. We are excited about this opportunity and we look forward to seeing this dialogue continuing in 2019 and beyond leading to eventual commencement of the Act.

Another positive development was the improved relationships between CSOs and County Governments. Civil society organizations have been struggling for the past years to engage and work with County Governments as required by the Constitution. However, very few County Governments were willing to cooperate and it appeared that CSOs were knocking at doors that were bolted from within.

There was however a significant change in 2018 with several County Governments inviting the CSOs for dialogue on how to work together. We welcome these open-door opportunities offered by many Governors led by Makueni Governor, Professor Kivutha Kibwana. The Governor gave a keynote address at a Makueni Civil Society Network conference and challenged the CSOs to work with the County Government by providing oversight, promoting citizen engagement and building platforms where CSOs, Citizens and the Government can dialogue.

The say that a journey of a thousand miles starts with one bold step; after many years of shifting feet, pushing and pulling, we believe that a few steps forward were achieved in 2018 on civil society **strengthening and democracy and governance sectors.** **When one or two Governors say, “welcome, our doors are open”, there are chances that these successes will be replicated over the next few years in other counties.**

We wish to celebrate all our communities, civil society and our development partners for their **cooperation and support.** **Let’s engage further in 2019 and in future to ensure that Kenyans realize full benefits from the expanded civic space.**

Chris Mbiti

Executive Director

Chris Mbiti engaging the leaders of Machakos CSO Network during the County CSOs Conference in 2018



EXECUTIVE SUMMARY

The struggle for civic space in Kenya has been long and bumpy. This started with scampers for multi-party politics in the 80's that culminated in repeal of Section 2A of the then Constitution of Kenya that barred multi-party politics. Later, the clamor for the New Constitution was concluded in 2010 when the New Constitution was promulgated.

It would be assumed that these two major constitutional milestones should have transformed civic space for citizens and civil society organizations in Kenya. However on the contrary, it appears not to have had significant impact. In fact, there are views that civic space in Kenya has been on rapid decline since these two major constitutional milestones were implemented.

Shrinking Capacity

On one hand, civil society no longer have the funds that they used to have in the 80's and 90's that allowed them to operate and initiate projects freely in the country. Donor flight seems to have become the unwelcomed guest to increased democratization of the Kenyan society.

The other negative change is that the state becomes more vindictive and punitive to the sector; with closure and freezing of banks accounts of several CSOs due to their outspokenness on corruption and other malpractices.

State of PBO Act (2013)

The transformative PBO Act (2013) that had been developed through a joint initiative by Government, NGO Board and civil society has not been implemented more than 5 years since it was passed into law and the road ahead is still bumpy and there is no telling when this Act will be commenced.

While civil society is of the view that this law should be implemented with immediate effect and without much amends, the Government has been engaged in several delay tactics and seeking to amend the law. The current proposed 40 amendments at the end of 2018 are currently under discussion and CSRG has already put a Technical Working Group (TWG) to respond on them and we hope this would be the last hurdle before the Act is implemented.

The eased tensions in 2018 between civil society and Government over the stalled PBO Act (2013), with Government extending opportunities for dialogue with civil society towards possible implementation of the Act, was a welcome move and we look forward to increased momentum in 2019 toward the implementation of the Act.

Democracy and Governance

Under the Democracy and Governance programme, there were positive developments in a few counties, where County Governments have indicated willingness to enhance dialogue with civil society and to involve them in participatory development processes at County level.

PEN's engagement with counties has seen significant progress in 8 counties and CSO networking engagements picking up in 29 counties. We have noted that the ability of civil society to demonstrate its effectiveness through participation in NGO Weeks and CSOs Conferences were key contributors to





Civil Society Activism takes center stage

CSO forums in Kilifi, Machakos and Makueni as civil society seek to reignite the vibrancy that was in the 80's and 90's.

The road blocks to open space is different today with civil society itself struggling with its own capacity challenges and lack of funds



these positive changes.

Scaling Up

The big challenge facing the sector is limited funding to replicate and scale up processes that are currently riding high in civil society strengthening and democracy and governance initiatives such as CSO weeks/exhibitions, CSO conferences, County and National level CSO County networking and capacity building.

We also believe the engagement with NGO Board and Ministry of Devolution and Planning are critical and we call upon our development partners to help catalyze and replicate the positive steps so far taken in a few counties to reach most counties in 2019 and beyond.

Environment and Natural Resources

Activities under Community Resilience to Environment-Related Shocks have continued support to Mutulani Water Project in Makueni to improve water and sanitation services to 1500 families and school children. Additional progress was achieved with the completion of the drilling of a borehole in 2017 and in 2018 the County Government of Makueni pledged to equip the borehole, a pledge we hope will be realized soon.

We have noted the need to engage the communities in environmental activities to recharge the ground water systems, a process that continued much of 2018 partnership with Global Giving to raise funds for this critical phase of the project.

Achievements 2018



Back in 2016: Irungu Houghton, British High Commissioner to Kenya Christian Turner, and Elizabeth Mueni of Oxfam, plus many other civil society activists and donors called for immediate implementation of PBO Act 2013. Nothing happened.

In Nov, 2017: The High Court ruled for implementation of the Act in 30 days. Impunity ruled the day.

2018 might as well end up being the year of opportunity that saw a marginal improvement of in relationships between government and civil society that hopefully may pave way for the implementation of the Act.



Civil Society Strengthening

Our strategic goal under civil society strengthening aim is to build a robust CSO sector influencing development agenda in Kenya. The state of civil society sector in Kenya has been very brittle since it started swinging along with political ethos of the moment that heightened differences and fractured it into various chapters, each supporting a different political ideology. So that from a vibrant NGO Council in the 80's and 90's, Kenya ended with more than three competing councils each purporting to speak for the sector.

Initiatives to revamp the sector started in 2009 with formation of coalition CSO actors coordinated through PEN to support a new policy and a legal framework that culminated to the PBO Act (2013). However the Government has never implemented the Act and has been proposing various amendments.

This is a process that has continued with mixed results as reported below.

1. The Civil Society Reference Group (CSRG) is currently a functional Secretariat of Public Benefits Organizations (PBOs) with membership increasing from around 10 in 2014 to 167 in 2018.
2. Elections to the Oversight Committee are held biennially during the annual delegate's conference, with the last being held in May 2018 where 95 delegates elected the current office bearers for a two year term.
3. The CSRG has membership in 29 counties in Kenya from less than 10 in 2014 and this is a significant progress. The biggest challenge has been funding the Secretariat because few of its members are fully paid up.
4. PEN jointly with CSRG, Freedom House (FH), National Coalition for Human Rights Defenders, URAIA Trust, and ICNL supported the convening of the 4th PBO Leaders' Summit on 26th July 2018. The theme of the summit was *"Bridging the Gap between Civil Society and the State for Sustainable Development Effectiveness. This is the time!"* The summit was attended by 222 leaders. Also in attendance were representatives from 10 Embassies. The NGO Coordination Board also sent representatives. Additionally guest from neighboring countries: Uganda, Tanzania, Rwanda, South Africa and USA came to share experiences.
5. Two main publications by CSRG were launched during the event. These are "Know Your Rights and Duties as a CSO" Handbook and "The Guide to the Public Benefit Organization Act (2013)". The panel discussions focused on enhancing civic space with emphasis on lesson from East Africa.
6. CSRG has successfully lobbied for enabling environment of the sector and has engaged different sector players to resist attempts to amend the PBO Act (2013) and instead called for its unequivocal implementation. Some of the interventions have included seeking interventions of the courts including the Supreme Court order in September 2017 that clearly ruled for implementation of the Act within 30 days, a ruling that has so far not been obeyed. The Government's last 40 proposals introduced in 2018 have not been discussed in Parliament and CSRG has already formed a Technical Working Group (TWG) that has responded to amendments. Although the civil society is of the opinion that the 40 proposed amendments on PBO Act are redundant, they nonetheless welcome the new spirit of dialogue and engagement. We believe this is needed to speed up the implementation of the Act.
7. PEN and CSRG have also built capacity of CSOs leaders through a leadership and integrity curriculum established in 2015. More than 60 CS leaders went through the training in 2018, with accumulative training totaling up to 142 since the training started in 2016.

CSO Strengthening Milestones

- Although PBO Act (2013) was not implemented, the Government, NGO Board and Civil Society were engaged in constructive dialogue on the state of the Act for the first time since the Act was accented to.
- In discussion were the 40 amendments that had been proposed by government, which CSOs through Civil Society Reference Group (CSRG) responded to.
- CSRG established membership of 167 focal points in 29 counties and held a Third Delegates Conference attended by 95 representatives from all over the country

Welcome!

It is our hope that this gesture by Prof. Kivutha Kibwana of Makueni County is replicated across the country. County Governments requires the support of civil society if they have to fulfill their constitutional mandate of delivering services and rights to their citizens.

The CSO Conference organized by PEN in Makueni in collaboration with Makueni Civil Society Network (MACSON) attracted full participation by the Governor, Prof. Kivutha Kibwana, CEC member for Devolution Hon. Julius Kaloki, and Director of Public Participation and Civic Education, Ms Zipporah Wambua.



Democracy and Governance

Under Democracy and Governance Programme, PEN seeks to improve responses of Governments to the rights and needs of citizens at all levels by strengthening citizen awareness and capacity on legal, administrative and political issues that need their participation and decision-making. This is in order to hold duty bearers to account.

At the same time, we seek to enhance Government's capacity to engage communities and corporations and take positions and decisions that favour community interests.

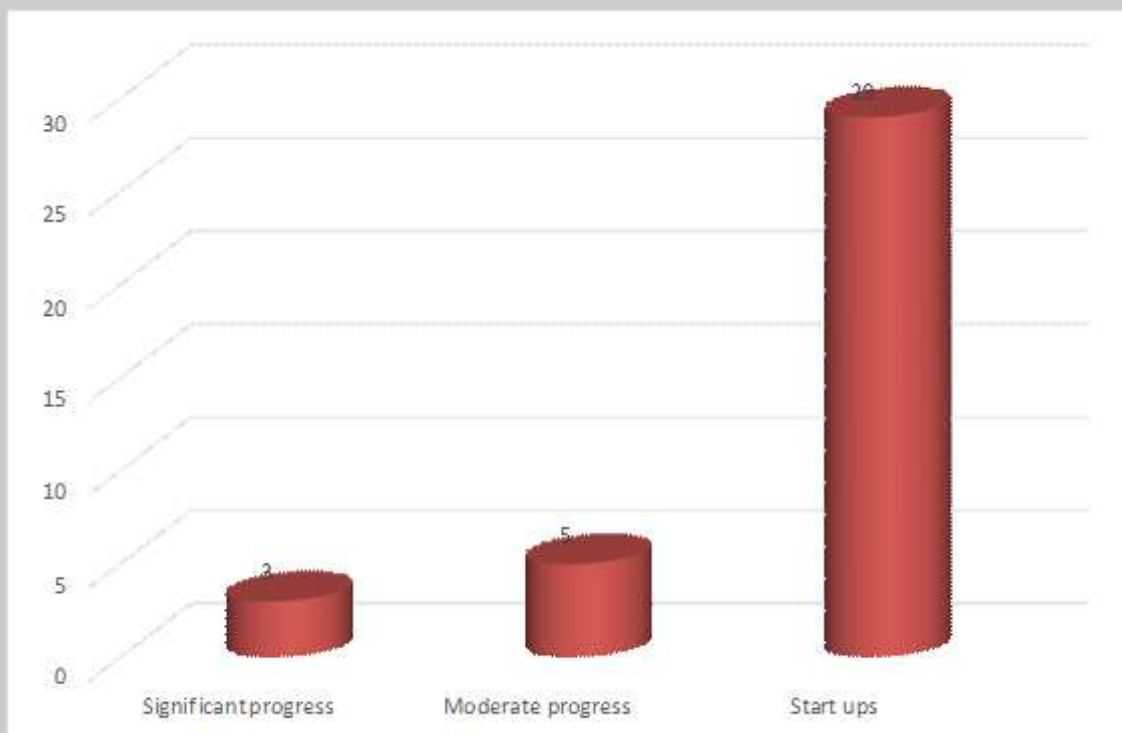
Just as it was with the roll out of the new National Rainbow Coalition (NARC) Government in 2003, the transition into devolved governments systems in 2013 caught civil society unprepared and its weakest point.

Many CSOs had thought that the new County Governments supported by the New Constitution, would automatically open doors to the sector as their role was clearly earmarked by the Constitution. They later found that this was a mistaken hope as most County Governments did not want civil society nosing around their activities.

The provisions to involve citizens in governance, planning, budget preparation among others were overlooked; and for five years of the transition into devolved government system, civil society and citizens were sidelined in the affairs of County and the National Governments and the country has paid the prize with spiking corruption in all sectors, poor coordination and implemented plans, unspent budgets and over-domineering nature of governors in county level decision-making processes.



CEC member for Devolution Hon. Julius Kaloki (left) and Director of Public Participation and Civic Education, Ms Zipporah Wambua (right) speaking at the Makueni County CSOs Conference.



Engaging County Governments: Momentum 2018

1. Significant Progress Achieved in 3 counties
2. Moderate Progress in 5 and start ups in 29 counties where CSRG has membership
3. CSRG achieved a membership of 167 against 10 in 2014
4. 142 CSO Staff Trained on leadership since 2015

“Given resources and momentum built so far, it would take roughly five years, to achieve good progress in all the 47 counties in Kenya, opening space for citizens and civil society organisations”, PEN.

Opportunities however started edging open in 2018 in a number of counties, though not fully. PEN seeks to engage more with County Governments to promote and engage in constructive dialogue with citizens.

Achievements under democracy and governance

1. The 2017 civil society exhibitions held in Machakos and Bungoma started the pace of improvements with County Governments acknowledging that the sector played significant roles **in development of the county. The comments by Machakos Executive attested to this fact, “We did not know that you were that many and had achieved that much with communities”**. Next was an invitation to the sector to participate in the development and review of CIDP and other activities and unlike previously, they started responding to CSOs concerns.
2. Three CSO Network Conferences held in Machakos, Makueni and Kilifi counties reflected on the achievement of the sector in building relationship with County Governments. In Machakos, it was the County Government that was holding the forts and not opening doors for engagement; in Makueni, it was civil society that had not put its house in order to engage fully with County Government; in Kilifi, it was a start of an all-system-go process that had not gained momentum and lacked resources to jumpstart it.
3. PEN has seen much momentum in relationship building through these two activities and would like to roll them out nationally. The processes of engagement also started in 5 other **counties and CSRGs’ membership in 29 counties. The tempo of engagement was however restricted by limited funding to the PEN and Civil Society Reference Group (CSRG)**.
4. There is a keen interest by County Executives in a good number of counties to open doors and start engaging the sector. For example in November 2018, the Governor of Makueni County, **Prof. Kivutha Kibwana, rolled out what he called “all doors open” strategy and directly put a challenge to PEN and the Makueni CS Network members to proactively engage and be part of counties development scenarios: “Our doors are fully open. Engage with communities. Engage with the Government. Engage with any department under my Government. We have established adequate devolution structures (such as devolution clusters and people’s forums) that you can engage in, all the way from grassroots to the county level. Choose whichever space suits you. We will be there to support you. I reiterate my commitment to new power that will cause transformation of the County as a whole.” We hope this spirit of collaboration transcends all counties, sectors and departments and become the tempo of the future for counties and civil society in Kenya.**
5. Civil Society Reference Group (CSRG) continued its outreach to County level CSOs with membership reaching 167. There is more that CSRG can do and achieve with County level Networks to hold County Governments to account on budgets and service delivery.

Negotiated change takes long to be achieved and it is a process that we are seeing progressing well under strategic democracy and governance objective. Civil society has positively contributed to development of policies in at least 3 counties and the process seems to be picking up well in 5 other counties and opportunities in 29.

The Civil Society sector in Kenya needs to fully prepare itself to ensure that County Governments are transparent and more accountable to its citizens. There is therefore need to sustain the momentum gained so far and donors and governments are requested to keep up the faith on the sector.

Environment and Natural Resources

Climate shocks are a critical challenge facing poor communities in Kenya with regular drought inter-
loping with flooding and breakdown of infrastructure and disease outbreaks resulting into food
shortages, constant famine are a reality in most parts of dry lands of Kenya.

Working with farmers, we seek to improve the ability of the poor to adapt to climate change effects
while strengthening value chains of agro-produce that enhance profitability of farm enterprises.

The Environment and Natural Resources Sectors have been hard hit by declining funding to Civil So-
ciety Sector particularly to smaller CSOs and it is critical that development partners begin to refocus
funding opportunities to smaller Civil Society because their activities directly tackle poverty and en-
vironment issues at the grassroots.

Achievement under Community Resilience to Environment-related Shocks

PEN's interventions in Mutulani Village of Makueni County continued to improve livelihoods of 1500
women and children by supplying clean water from water tanks installed at the institutions and
shortening distant to fetch water.

The more than 600 children in Mutulani Primary and Secondary schools have been saved the daily
agony of including water in water cans as a daily load they have to carry to the schools every morn-
ing. This is because water is now available in the schools most of the year out of interventions that
have been put in place by PEN in the past three years.

There is also increased sanitation and hygiene as students and communities have been trained on
improved health and hygiene practices and of course increased access to clean water is a primary
contributor.

The borehole constructed in 2017 did not yield as much water as expected and we are in the process
of installing pumping equipment to make water available for use by students and the surrounding
community.

We are also working on a fundraising programme with Global Giving to ensure that this borehole be-
comes a sustainable source of clean water to households and communities.

We are also learning lessons and the value of accompanying conservation efforts in community wa-
ter projects. Declining ground water resources is a big problem all over Kenya, and if no effort is put
to improve ground water recharge systems, most boreholes will go empty in a few years time.



Task at Hand

Trekking to School with a Jerrican at hand (above) was the norm before PEN intervened (below) in Mutulani Schools, Makueni County. Now learning is much easier. Children have improved grades, and require less sick off days than before. The challenge before the community is to improve water conservation in order to recharge ground water so that the Borehole can provide water all year round. There is still further need to improve water sanitation in community watering holes that are highly silted and polluted. What has happened to schools should also happen at community level.



Board and Staff Development

PEN implements most of its work through partners on the ground and have a small team of staff that provides supervision, capacity building, tracking and monitoring and evaluation. We had 8 members of staff in 2018 that included 5 women and 3 men, majority based in our Nairobi office. We have seconded a staff member to CSRG Secretariat based in Nairobi.

Two staff members participated in external training on project and institutional management. Four others took part in a donor compliance capacity building training.

The Board recruited one extra member, Dr. Jan Mutai, bringing the total Board members to 7. The Board chaired by Dr. Samsom Muttai, held three meetings in 2018 to guide PEN leadership in current and future strategic processes and to approve budgets, and scrutinize audit and other compliance reports.

A photo of PEN's staff and program associates



A recent photo of the PEN's Board of Directors



Financial Update

PEN is grateful for generous support by several development partners including The Ford Foundation, Diakonia Kenya, National Endowment fund (NED), Global Giving, a new fund from USAID through AHADI Kenya to support democracy and governance and civil society strengthening activities at the end of 2018.

We received a total of 27.05 million Kenya shillings in 2018 and spent approximately 27.84 (see figure 1 opposite).

Of the funds received, 21.6 million were spent in Democracy and Governance, and 5.9 million in CSO effectiveness and 366,000 on Community Resilience to Environment-Related Shocks work in Ma-keni, which were also cost-shared by community contributions.



Fig. 1: Income 2018

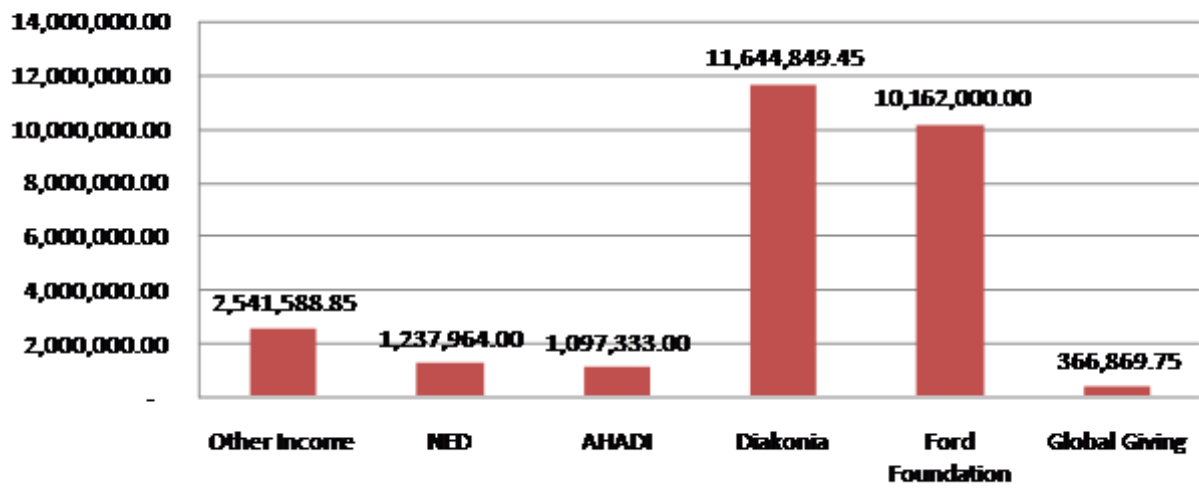
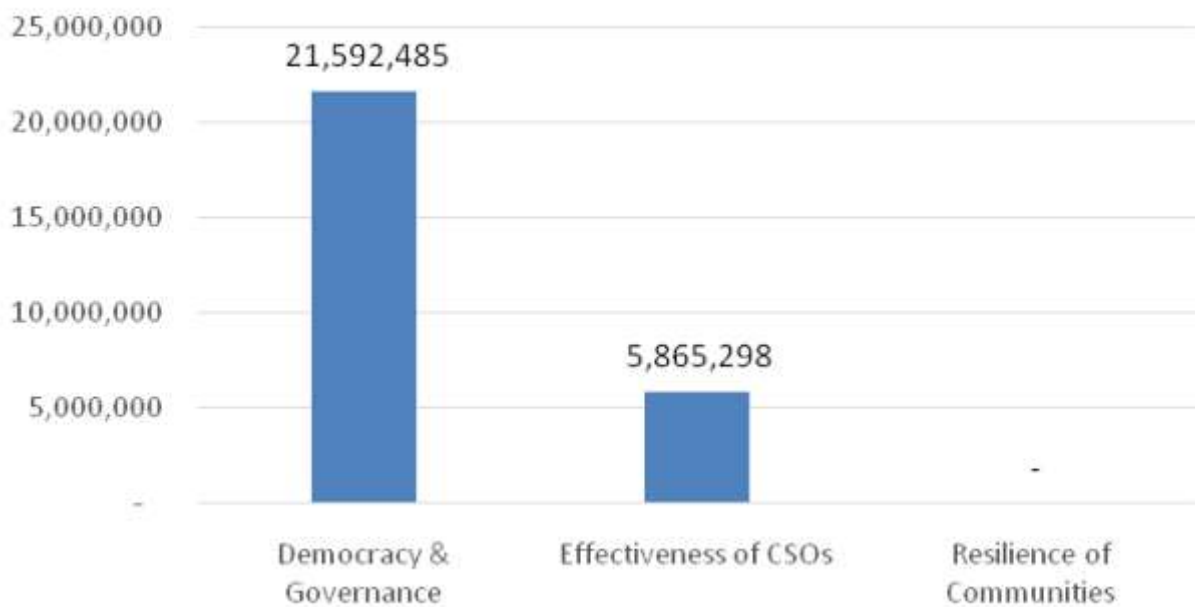
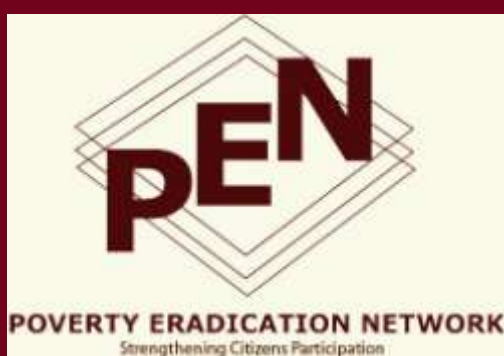


Figure 2: Expenses 2018 Per Sectors





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