

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



### **Machakos Regional Forum: Naïve & Mostly Undecided, We Can Only be a Swing Vote**

Lysak Haven Park Hotel  
November 12, 2020



## 1. Introduction

### a) Background/Objectives and Outcomes of the Project

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 BBI 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 first regional forum targeting select stakeholders from the Counties of upper Eastern.

#### b) Opening Remarks: Chris Mbiti

- BBI is a big issue around which every Kenyan ought to be able to engage in the spirit of public participation so that the peoples input is incorporated. But owing to the fact that the elite undertake public participation as a formality the views of the people are often ignored.
- There is an urgent need for the region to evaluate the dalliance with political parties, party brands and the politics that accompany them
- The Kamba community does not seem to be clear on issues that matter for the region for which the community should advocate and naivety has ensured critical issues such as SGR that passes across the region without any cargo terminal is a grave injustice and omission. We do not seem to know our problems and we don't have serious and credible leadership.
- The community assumes too much and appears so brainwashed ('ulengwi')
- Both dynasties and hustlers abuse, misuse and dump our community as politics is seen by many in the region as a waste of time
- Makueni is a little better than Machakos but generally Mutisyaism still seems to be the region's undoing. The region has no common agenda
- The region needs to get rid of Moism and all his orphans. Disruption in Meru after the death of their Kingpin Angaine and Ole Ntimama in Kajiado. The region must therefore consider 'killing' Moi's orphans to change the agenda of politics. The region must also be wary of 'wheelbarrow' politics.

## 2. Forum Proceedings:

#### a) Levelling of expectations

Participants to the forum were interested in benefiting from an appraisal of the fate of the PBO Act but also having heard about BBI, many participants were keen to know and understand much more about it with some additional depth:-

- How BBI tackles gender issues and deals with gender parity as well as protecting the gains women had in the 2010 Constitution such as the Uwezo Fund and its domicile
- The case that is being made for innuendo in some of the amendments proposed in the BBI and the best way to relate to the information
- Whether BBI speaks to disability and its representation; the youth agenda
- The role of PBOs in governance
- One participant hailed BBI as the best thing that happened this year

#### b) Unearthing knowledge on BBI

- Information that Kenya had been experiencing cyclical disruptive and violent elections every five years was agreed and that the BBI 9 issues were critical in dealing with this phenomenon
- As of 2018 the public was generally supportive of BBI and the handshake but from 2019 more contention has been witnessed that has tended towards outright rejection and resistance in 2020. The many false BBI launches have not helped matters
- Two distinct groups have emerged; those in support for BBI and those opposed. The two groups anchor their narratives around the need to change the Constitution to plug loopholes and the need to implement the Constitution 2010 fully instead of amending it.
- There is however a middle group that is undecided and doesn't know which way to stand. Ukambani is generally in this latter group "undecided"

**c) Mindsets and Prejudices towards BBI**

- The system of government seems to be the core change in the proposed BBI Bill
- Faith, private sector and development partners seem to support BBI
- Youth appear to have been promised a Deputy Premier position
- The zero sum politics of winner take all is bent on affecting the referendum
- It should be worrying that an exclusive process is expected to birth an inclusive outcome
- The rushed effort to conduct a referendum was raising eyebrows
- Citizens are in a state of confusion as many still cannot access BBI information, the public is still struggling to get soft or hard copies
- Constitutional moments involve all citizens
- The Jubilee party has imploded as a result of the BBI process increasing tensions and intolerance in the process
- The minimum standards of participation in constitution making has not been met
- In terms of content there are contentious issues: size of government and its impact on wage bill

### 3. ASSUMPTIONS SURROUNDING BBI

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

Issue	Opportunities	Threats
BBI	More resources allocated to the counties	<ul style="list-style-type: none"> <li>• If the BBI formula is not clear, the resources may not increase hence inequality</li> <li>• There might be more taxation to the citizens to get more resources</li> <li>• Government might take time to disburse the 35%</li> </ul>
	Special interest groups involved in governance and the achievement of 2/3 <sup>rd</sup> s gender rule realized.	<ul style="list-style-type: none"> <li>• An increase of an increased political elite</li> <li>• High wage bill</li> <li>• Women are removed from where decisions are made to where decisions</li> </ul>
	There may be a balanced system that helps with political inclusion (which is about the big 5 communities)	<ul style="list-style-type: none"> <li>• There is a lot of appointment powers of the president i.e. imperial presidency (e.g. who appoints the Prime minister, the head of majority in parliament and who can be fired any time if they do not toe the line – an issue that dilutes the integrity of elective politics)</li> <li>• The system still undermines inclusion in as far as it consistently leave out the minority groupings</li> </ul>
Electoral system and 2022 elections	<ul style="list-style-type: none"> <li>• IEBC have been reconstituted with representation from political parties</li> <li>• The electoral system adopted mixed member proportional representation in meeting the 2/3rds gender rule and special interest groups</li> </ul>	<ul style="list-style-type: none"> <li>• Partisanship in the electoral body so that 2022 elections are compromised.</li> <li>• Term limit of the incumbent president is not clear and he may come back in another position</li> <li>• Probability of a lot of conflict and tension in the 2022 elections.</li> </ul>
State of the economy	<ul style="list-style-type: none"> <li>• EAC integration might increase Kenya's GDP???</li> </ul>	<ul style="list-style-type: none"> <li>• Treasury borrows more to sustain the wage bill and pay the debt it has</li> <li>• Effects of a slowing economy because of two major processes – elections and referendum as well as a global recession because of COVID-19</li> <li>• Deepened poverty and vulnerability</li> <li>• Default in payment of Chinese loans</li> </ul>

Issue	Opportunities	Threats
		<ul style="list-style-type: none"> <li>Increased unemployment of locals and increased employment of foreigners</li> </ul>
State of the institutions	<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>
County governments	<ul style="list-style-type: none"> <li>More resources</li> <li>Opportunity for realizing 2/3rds gender rule in the senate only</li> </ul>	<ul style="list-style-type: none"> <li>Achievement of 2/3<sup>rd</sup> is not guaranteed in other positions because of the language “we shall consider”</li> <li></li> </ul>
Judiciary	<ul style="list-style-type: none"> <li>Smaller periods of judging corruption cases</li> <li>Vibrant judicial process</li> <li>Better / more independent</li> </ul>	<ul style="list-style-type: none"> <li>No guarantee that corruption will less</li> <li>Less resources in Kenya will increase corruption</li> <li>Judiciary will be weakened by nomination of ombudsman which threatens their independence.</li> </ul>
Anti-corruption	<ul style="list-style-type: none"> <li>Counties with a lot of resources = more corruption which is an opportunity for anti-corruption</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>Political interference</li> <li>No deterrent mechanism to bar corrupt people (apart prosecution) from contesting any public office</li> <li>Political leaders are not willing to be held accountable or to take political responsibility for corruption cases under his/her watch.</li> <li>Increased digital fraud by younger people will increase</li> </ul>
Security agencies	<ul style="list-style-type: none"> <li>Beefed up security to reach the UN standard of one to 400 residents as opposed to the current ratio of 1: 1000</li> </ul>	<ul style="list-style-type: none"> <li>Compromising the integrity of the police because of the police council is headed by cabinet secretary (appointed by the president hence the control of the executive) has replaced the national police service which is independent</li> <li>Increased police brutality</li> </ul>



#### 4. Closing Remarks

The session closed after an intense debate on BBI in which participants acknowledged that there is palpable confusion which way Kenya was heading. The rejection of a referendum sponsored by the government in 2005 was very informative.



Participants during a Working Session

**PROGRAMME****Regional CSO Dialogue Forum - Machakos****Activity Agenda**Date: 12<sup>th</sup> November 2020.

Venue: Lysak Haven Park Hotel, Machakos.

<b>Time</b>	<b>Activity</b>	<b>Person in charge</b>
9.00 – 9.30	Arrival and registration	Mary Mutuku
9.30 – 10.00	Welcome and Introductions	Mary Mutuku
10.00 – 10.15	<ul style="list-style-type: none"> <li>• Opening remarks</li> <li>• Background and objectives of the project</li> <li>• Intended outcomes of the meeting</li> </ul>	Chris Mbiti Patrick Ochieng
10.15 – 11.15	Discussants on the Reform Agenda including BBI Report	Patrick Ochieng
11:15 – 11:30	<b>Tea Break</b>	
11:30 – 13:00	Plenary Discussions on the Reform Agenda	Patrick Ochieng
13:00 – 14:00	<b>Lunch</b>	
14.00 – 14.20	Breakout sessions	Patrick Ochieng
14:20 – 14:50	Reporting on Breakout sessions	
14:50 – 15:00	Wrap-Up	Patrick Ochieng



**LIST OF PARTICIPANTS**

<b>NAME</b>	<b>SEX</b>	<b>COUNTY</b>	<b>CONTACT</b>
Festus Mutuku	Male	Machakos	722719564
Victoria Philip	Female	Machakos	715272927
Joseph Kimeu	Male	Machakos	724925274
Vexinah Muindi	Female	Machakos	723762949
Fred Munyao	Male	Machakos	724179209
Jeriter Mutisya	Female	Machakos	722796197
Dr. Jimmy Mutunga	Male	Machakos	722957416
Festus Muindi Maii	Male	Machakos	725085553
Chris Mbiti	Male	Machakos	722704902
Robert Muli	Male	Machakos	798862237
Daniel Mutunga	Male	Machakos	717755266
Josedas Muthama	Male	Machakos	723774134
Donatus Lili	Female	Machakos	711120007
Mary Mutuku	Female	Machakos	734934375
Dr. Katindi Sivi	Female	Machakos	722765697
Fr. Jeremiah Mutuku	Male	Machakos	728103030
Chresence Mutungi	Male	Machakos	714394291
Justus Mutuku	Male	Machakos	721961998
Judah Kioko	Male	Machakos	723420229
Dr. Edward Nzinga	Male	Machakos	722501779
Philippe Sadjah	Male	Machakos	721280573