

**Hot in Law, Luke-warm in Reality:
Towards an Enabling Environment for Civil Society
Organisations in Kenya**

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For Reality of Aid – Africa Network

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List of Abbreviations

CPDE	CSO Partnership for Development Effectiveness
CSI	Civic Space Initiative
CSO	Civil Society Organisation
DP	Development Partner
EE	Enabling Environment
FGD	Focus Group Discussion
GPEDC	Global Partnership for Effective Development Cooperation
ICC	International Criminals Court
ICCPR	International Covenant on Civil and Political Rights
ICT	Information Communication Technology
KII	Key Informant Interview
KODI	Kenya Open Data Initiative
MDA	Ministries, Departments and Agencies
MTP	Medium Term Plan
NGO	Non-Governmental Organisation
OBI	Open Budget Index
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
PBO	Public Benefits Organisation
RoA	Reality of Aid
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme

Executive Summary

Across the world, Civil Society Organizations (CSOs) pursue and promote public benefit purposes. Nonetheless, they contend with significant challenges that affect and limit the outcomes of their work in profound ways. Their ability to work is conditioned by the regulatory environments within which they operate, the political and governance contexts and by economic conditions that determine their resource circumstances. In Kenya, Civil Society Organisations have contributed substantively to socio-economic development, constitutional reforms, promotion of good governance and protection of human rights. Nonetheless, in Civicus' Enabling Environment Index for 2013, Kenya reported a sub-optimal environment for CSOs.¹ This was attributed to inadequacies of the legal and regulatory environment, limited access to resources and negative perceptions of the role of CSOs by government and the public in Kenya.

In 2011, stakeholders at the 4th High Level Forum on Aid Effectiveness in Busan, South Korea committed to:

'a) Implement fully [their] respective commitments to enable CSOs to exercise their roles as independent development actors, with a particular focus on an enabling environment, consistent with agreed international rights, that maximizes the contributions of CSOs to development' and to 'b) Encourage CSOs to implement practices that strengthen their accountability and their contribution to development effectiveness, guided by the Istanbul Principles and the International Framework for CSO Development Effectiveness'.²

These commitments and many others underpin and form the basis upon which advocacy and initiatives towards promoting and sustaining an enabling environment for CSOs continues to be carried out by various entities.

Reality of Aid – Africa Network, in its pursuit of this agenda, commissioned a study in Kenya to:

- i. Assess the structural, legal, policy space and institutional framework for the implementation of the Post Busan agenda on promoting an enabling environment for Youth & Child Rights CSOs,
- ii. Document the status of progress towards an enabling environment for Youth & Child Rights CSOs in Kenya, and
- iii. Propose specific actions that stakeholders can take to fully utilize opportunities that the Busan outcome presents for promoting an enabling environment for Youth & Child Rights CSOs in Kenya.

To achieve the aforementioned objectives, the study pursued an overall exploratory mixed methods research design, using semi-structured interviews and focus group discussions to collect data and content analysis to analyze study data. It targeted representatives of civil society, the legislature, media,

¹ L Fioramonti & O Kononykhina '2013 Enabling Environment Index' (2013) Civicus World Alliance for Citizen Participation [Online] available at:

http://www.civicus.org/eei/downloads/Civicus_EEI%20REPORT%202013_WEB_FINAL.pdf

² OECD 'Busan Partnership for Effective Development Co-Operation' Fourth High Level Forum on Aid Effectiveness, Busan, Republic Of Korea, 29 November-1 December 2011 [Online] available at:

<http://www.oecd.org/development/effectiveness/49650173.pdf>

government departments relevant to regulation of CSOs, foundations, private sector, Development Partners and academia in Kenya. The study was conducted between October 2016 and December 2016.

As a framework for analysis, the study adopted three areas under Indicator Two of the Global Partnership for Effective Development Cooperation (GPEDC) monitoring framework.³ These were namely:

- i. Area One: Universally accepted human rights and freedoms affecting Children rights and Youth CSOs,
- ii. Area Two: Policy Influencing, and
- iii. Area Three: Donor – CSO relationships.

It emerged from the study that:

1. There was some degree of liberty for Youth & Child Rights CSOs to form, register and freely operate without severe restrictions from government. An elaborate framework of freedoms and rights were entrenched in the constitution and subordinate legislation;
2. In practice, there was evidence of a steady trend towards active shrinkage of the space for operation of CSOs. This was not necessarily severe and obstructive to the extent that Youth & Child Rights CSOs would not operate. The larger proportion of CSOs remained allowed by law to carry out their activities and to execute their mandate;
3. There was a perceived dichotomy of CSOs argued to condition the realization of their rights and freedoms. Youth & Child Rights CSOs involved in service delivery were apparently viewed by government as partners performing a complementary role hence treated more favorably than those engaged in governance and accountability work whose rights were increasingly actively limited. Some restrictions to the rights and freedoms of Youth & Child Rights CSOs were attributed to government perception that CSOs were overly against it and not interested in constructive oversight or criticism;
4. Where there were restrictions, the most evident mechanisms employed by government to restrict rights and freedoms of Youth & Child Rights CSOs included: litigation, invocation of national security, political intimidation, legislation, threats of limitation of resources and leveraging of state powers over the regulation of CSOs;
5. Formation and registration of CSOs was reportedly more automated, clearer and open. However, the process remained slow, cumbersome, expensive for many Youth & Child Rights CSOs and allowed a lot of discretionary power to the NGOs Coordination Board and other institutions responsible for processing registration that was sometimes exploited to limit some rights and freedoms;
6. There was need for the existing law governing formation and registration of CSOs, the NGOs Act 1990, to be repealed or subjected to a significant set of amendments for it to cope and be more responsive and efficient in conducting the registration process for CSOs. Otherwise, commencement of the PBO Act 2013 was argued to portend a better framework for addressing most of prevailing challenges with formation, registration and facilitating an enabling environment for Youth & Child Rights CSOs;
7. Continuing reforms in the judiciary were considered a positive step towards promoting and protecting an enabling environment for Youth & Child Rights CSOs. The judiciary was increasingly providing a fall back line of defense for CSOs whenever their rights and freedoms were infringed both in the enactment of laws and enforcement of policy;
8. With constitutional guarantees and subordinate legislation supporting freedom of expression, the environment remained largely open for Youth & Child Rights CSOs to voice their opinions even on issues critical of government. However, increasing application of political and legal barriers such as

³<http://effectivecooperation.org/wp-content/uploads/2015/05/GPEDC-Monitoring-Framework-10-Indicators.pdf>

slander and libel litigations threatened to limit freedom of expression and lead many Youth & Child Rights CSOs to self-censorship;

9. There were no severe restrictions on access to resources for Youth & Child Rights CSOs as they continued to enjoy the benefits of the financial system in the country without undue limitations. CSOs remained free to mobilize and apply resources to execute their mandates. There was a notable trend of intentions by government to limit access to resources for example through the proposed amendments to the PBO Act 2013 that sought to limit resources from external sources to 15%;
10. There was considerable space for Youth & Child Rights CSOs to engage in policy making. This was available for a broad range of policy issues and open to all CSOs across the country at local, regional and national levels. However, opportunities available for policy engagement were largely considered by Youth & Child Rights CSOs to be cosmetic and incapable of facilitating meaningful engagement that could yield substantive influence;
11. There were notable capacity challenges that varied between Youth & Child Rights CSOs regarding policy influencing. A notable appeal was made by Youth & Child Rights CSOs for more investment in capacity development to improve their engagement in policy processes;
12. Government was leveraging various ICTs and new media to employ multiple platforms that had arguably improved access to information. There were several legislation and policy guidelines that provided substantive guarantees for Youth & Child Rights CSOs to anchor their demands for information held by government. Nonetheless access to public information remained challenging and ad hoc with outstanding gaps in quality especially related to timeliness and suitability of formats;
13. Responsiveness of funding mechanisms favored by donors to priorities of CSOs remained a challenge. There were insufficient opportunities for Youth & Child Rights CSOs to effectively engage at high levels and significantly inform or affect donors' national strategies and funding mechanisms to make them more responsive to their priorities, transparent and reliable;
14. Multiple platforms for engagement between CSOs and donors had been created which allowed deliberation on the character of development cooperation in Kenya. However, relations between donors and CSOs remained lopsided with a lot of power still in the hands of donors. This meant that accountability and openness between donors and Youth & Child Rights CSOs was still largely inadequate; and
15. There were notable reservations about the efficacy of local fundraising or domestic resource mobilization for Youth & Child Rights CSOs that was attributed to lack of significant legal and policy incentives for promoting local resource mobilization for CSOs and a disconnect between CSOs and private sector.

1.0 INTRODUCTION

1.1 Background Information

Civil Society Organizations (CSOs), the broad spectrum of organizations that are not part of formal government apparatus but which engage in activities aimed at accruing benefits to the public without necessarily earning profits to their directors, have been in existence for a long time now.⁴ They are known for their substantive contributions to development strategies at local, national and international levels by generating innovative ideas that assist in finding solutions to complex pressing global development issues.⁵ Most often they have achieved this through i) facilitating effective representation of a wide range of voices including those of vulnerable and marginalized groups, ii) championing for legal and policy reforms that guarantee social, political, economic and environmental justice, iii) mobilizing communities to take responsibility and actively engage in delivery of services, and iv) keeping policy makers to account on their actions and obligations.⁶

Though they pursue public purposes, civil society organizations face profound challenges world over. Their ability to execute their mandate is conditioned in profound ways by the legal and regulatory environment within which they operate, the political and governance contexts, relations with key entities that hold stake in their work and by economic conditions that determine their resource circumstances. Whilst a lot of responsibility for ensuring that these elements facilitate the work of CSOs lies with government, other entities including private sector, development partners and CSOs themselves also have important roles to play in terms of creating and sustaining an environment that is conducive for CSOs to thrive.

Recognizing these realities, international frameworks have been advanced aiming to protect CSOs and promote an enabling environment for them to thrive. These include: the UN Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the General Assembly in 1999, the Busan Partnership for Effective Development Cooperation agreed in December 2011, and the UN Human Rights Council's resolution on Protecting Human Rights Defenders which called on governments to facilitate an enabling environment for human rights to operate without interference and insecurity adopted in 2013. Also the CSI submission on an enabling environment for Civil Society to the UN High Level Panel on the Post 2015 Development Agenda urged the prioritization of an "enabling environment" for civil society in the post 2015 development agenda with due focus on governance and legal frameworks.⁷ In the submission, it underscored the fundamental role of CSOs in development which was increasingly undermined by restrictions and threats to civic space.

⁴Johns Hopkins International Fellows in Philanthropy 'Toward an Enabling Legal Environment for Civil Society' Statement of the Sixteenth Annual Johns Hopkins International Fellows in Philanthropy Conference, Nairobi, Kenya, July 4–8, 2004

⁵S Hurt 'Civil, or Uncivil Society? The International Governance and External regulation of Civil Society and the Impact of Constitutionalism on Civic Space in South Africa' (2014) Paper presented at the 'Twenty Years of South African Constitutionalism: Constitutional Rights, Judicial Independence and the Transition to Democracy' conference held at New York Law School in November 2014, New York City, NY

⁶K Howard et al 'Space for Civil Society: How to protect and expand an enabling environment' (2013) CIDSE Working Group on the Enabling Environment and Alliance Community of Practice on Human Rights in Development

⁷Civic Space Initiative 'Agenda: Civic Space Initiative' (2015) Submission on an Enabling Environment for Civil Society to the UN High Level Panel on the Post 2015 Development

The Busan Partnership for Effective Development Cooperation agreed in December 2011 acknowledged that “Civil society organizations (CSOs) play a vital role in enabling people to claim their rights, in promoting rights based approaches, in shaping development policies and partnerships, and in overseeing their implementation.”⁸ As such developing country governments, development partners (donors) and raft of other stakeholders in development including CSOs and private sector committed to:

a) Implement fully [their] respective commitments to enable CSOs to exercise their roles as independent development actors, with a particular focus on an enabling environment, consistent with agreed international rights, that maximizes the contributions of CSOs to development

and to

b) Encourage CSOs to implement practices that strengthen their accountability and their contribution to development effectiveness, guided by the Istanbul Principles and the International Framework for CSO Development Effectiveness.

These commitments and many others underpin and form the basis upon which advocacy and initiatives towards promoting and sustaining an enabling environment for CSOs continues to be carried out by various entities be they donor government, international institutions, developing country governments as well as civil society organizations like Reality of Aid Africa Network.

1.2 The Position and Role of CSOs in the country

In Kenya, the role of Civil Society Organizations (CSOs) in service delivery and promotion of human rights, advocacy for public awareness and accountability from government has a long history. Civil Society Organisations have contributed substantively to constitutional reforms and promotion of good governance and protection of human rights. The CSO sector in Kenya is considered as one of the most vibrant in the Eastern African region. In fact, the role of CSOs is underscored in the country’s blue print plan – the Vision 2030 where the Political Pillar acknowledges that civil society and the people and a vigilant press are instrumental in protecting the country from abuse of office by bad leaders. Further, Kenya’s Medium Term Plan (MTP – II), which itself draws from the Vision 2030, emphasizes the value of CSOs. It spells out the importance of strong partnerships with NGOs in the implementation of the country’s development agenda.

Nonetheless, Kenya was ranked 84th out of 146 countries in 2013 in the Civicus Enabling Environment Index with an index of about 0.43 on a scale of 0 to 1 where 1 is optimal.⁹ This reflected a prevailing sub-optimal environment within which CSOs in Kenya operate. This was largely attributed to inadequacies of the legal and regulatory environment, limited access to resources and negative perceptions of the role of CSOs by government and the public in Kenya.

1.3 Objectives of CSOs Enabling Environment Study

Reality of Aid – Africa Network (RoA - Africa) continues to work to increase dialogue on opportunities and challenges for creating enabling environment for CSOs. As such, the network aims to work with country-

⁸OECD ‘Busan Partnership for Effective Development Co-Operation’ Fourth High Level Forum on Aid Effectiveness, Busan, Republic Of Korea, 29 November-1 December 2011 [Online] available at:

<http://www.oecd.org/development/effectiveness/49650173.pdf>

⁹L Fioramonti & O Kononykhina ‘2013 Enabling Environment Index’ (2013) Civicus World Alliance for Citizen Participation [Online] available at:

http://www.civicus.org/eei/downloads/Civicus_EEI%20REPORT%202013_WEB_FINAL.pdf

level CSO networks to ensure that indicator 2 of the Global Partnership for Effective Development Cooperation Monitoring Framework is part of multi-stakeholder dialogue at country level and to create channels for input into the analysis of progress for the indicator by the UNDP/OECD team. Specifically, the network seeks to focus on two key areas for an enabling environment for CSOs: i) the implementation of an enabling regulatory and legal framework for CSOs (consistent with human rights norms for the right to organize, freedom of assembly and freedom of speech), and ii) the existence of inclusive policy processes and facilitative institutions (democratic ownership).

In its pursuit of this agenda, RoA Africa Network commissioned this research in Kenya to:

- i. Assess the structural, legal, policy space and institutional framework for the implementation of the Post Busan agenda on promoting an enabling environment for Youth & Child Rights CSOs,
- ii. Document the status of progress towards an enabling environment for Youth & Child Rights CSOs in Kenya, and
- iii. Propose specific actions that stakeholders can take to fully utilize opportunities that the Busan outcome presents for promoting an enabling environment for CSOs in Kenya, including Children rights and Youth organizations.

1.4 Study Approach and Methodology

1.4.1 General Design

The study pursued an overall exploratory mixed method research design. This allowed effective exploration and documentation of the key issues and to capture the experiences and soft nuances about progress towards attainment of a suitable regulatory and legal framework, inclusive policy processes and facilitative institutions to enable CSOs to operate in Kenya.

Sampling: The sample size was designed using the power analysis approach considering representativeness, convenience and practicalities regarding location and availability of stakeholders to participate in the study. Respondents were admitted into the sample considering they represented Civil Society Organisations in Kenya and had been operational at least since 2011. The sampling technique pursued was a mix of purposive and convenience sampling. Efforts were made to make the sample as diverse as possible involving as many categories of stakeholders as possible and to allow a balance in gender. Targeted key informants were mainly representatives of civil society, representatives of the legislature, media, government departments relevant to regulation of CSOs, Development Partners in-country and academia. See the full breakdown on the table below.

Table 1: EE Study - Kenya Sample Breakdown

Category of respondents	Key Informant interviews (KIs)	Focus Group Discussions (FGDs)	Total Sample
Civil Society Organisations (CSOs)	34	3 (3X10)	64
Government Departments	3	0	3
Development Partners (DPs)	5	0	5
Academia	2	0	2
Media	1	1 (1X10)	11

Parliament reps	3	0	3
Total	46		88

Instruments: The main instruments utilized in data collection in this study were the interview guides. These were developed in accordance with the framework of evaluation: i) Universally accepted human rights and freedoms affecting Children rights and Youth CSOs, ii) legal and regulatory environment, implementing rights and freedoms affecting Children rights and Youth organizations, iii) policy Influencing, iv) recognition of rights and freedoms affecting Children rights and Youth CSOs, and v) Donor – CSO relationships.

Collecting study data: The following methods were employed in collecting study data.

- i. A *review of available secondary literature* regarding the object of the study – dynamics, status, patterns in attainment of enabling environment for Youth & Child Rights CSOs across the globe was conducted. Reviewed literature included progress reports (both at national, regional and global levels), media accounts of relevance and recent academic publications. These provided essential background and contextual information that was useful in designing the overall evaluation (especially the interview guides) and for conditioning the analysis.
- ii. *Semi-structured interviews* were used to explore experiences and perceptions of stakeholders on progress, challenges and lessons regarding the push for an enabling environment for Youth & Child Rights CSOs in Kenya. These were in the form of key informant interviews with representatives of civil society, representatives of the legislature, media, government departments relevant to regulation of CSOs, Development Partners in-country and academia.
- iii. Focus Group Discussions were also employed to collect supplementary data. These mainly targeted CSOs and the media.

Analyzing study data: The main approach to analysis of study data was content analysis. This involved application of systematic review techniques notably thematic synthesis. This allowed collation, categorisation and analysis of perceptions of stakeholders on the key themes in order to arrive at narratives and key messages reflecting progress made towards attainment of an enabling environment for Youth & Child Rights CSOs in Kenya.

1.4.2 A methodological note on the focus of the study and definition of key terms

The thrust of this study was to investigate the status of the environment within which Civil Society Organisations were operating in Kenya with a specific focus on Youth & Child Rights CSOs. It endeavored to illuminate areas where progress had been made, both in terms of legal guarantees and in practice regarding realization and protection of rights and freedoms of Youth & Child Rights CSOs. As such reference to the phrase ***Civil Society Organisations (CSOs)*** in the report is purposively used to imply - ***Child rights and Youth CSOs.***

Civil Society Organisations was defined as - ‘Any organizations, whether formal or informal, that are not part of the apparatus of government, that do not distribute profits to their directors or operators, that are self-governing, and in which participation is a matter of free choice. Both member-serving and public-serving organizations are included. Embraced within this definition, therefore, are private, not-for-profit

health providers, schools, advocacy groups, social service agencies, antipoverty groups, development agencies, professional associations, community-based organizations, unions, religious bodies, recreation organizations, cultural institutions, and many more'.¹⁰

Enabling environment was defined as – ‘a set of conditions that impact on the capacity of citizens (whether individually or in an organized fashion) to participate and engage in the civil society arena in a sustained and voluntary manner’.¹¹

1.4.3 Assessment Framework

The framework for Assessing Progress on CSO Enabling Environment focuses on three core areas, and within each area addresses essential dimensions of the CSO enabling environment:

- i. **Area One:** Universally accepted human rights and freedoms affecting children’s rights and Youth CSOs.
 - **Dimension One:** Recognition of rights and freedoms affecting children’s rights and Youth CSOs.
 - **Dimension Two:** The legal and regulatory environment, implementing rights and freedoms affecting children’s rights and Youth organizations.
 - **Dimension Three:** Rights of specific groups
- ii. **Area Two:** Policy Influencing
 - Dimension One: Spaces for dialogue and policy influencing
 - Dimension Two: Access to information
- iii. **Area Three:** Donor – CSO relationships

¹⁰Johns Hopkins International Fellows in Philanthropy ‘Toward an Enabling Legal Environment for Civil Society’ Statement of the Sixteenth Annual Johns Hopkins International Fellows in Philanthropy Conference, Nairobi, Kenya, July 4–8, 2004

¹¹ICLN ‘Assessment Tools for Measuring Civil Society’s Enabling Environment’ (2014) Global Trends in NGO Law, 4 (3) 2 – 20 [Online] available at: www.icnl.org/research/trends/trends5-1.pdf

2.0 KEY FINDINGS

2.1 Area One: Universally accepted Human Rights and Freedoms affecting CSOs

2.1.1 Recognition of Rights and Freedoms affecting CSOs

We sought to determine whether the state recognized at the national level, three universally recognized human rights and freedoms affecting Youth & Child Rights CSOs in Kenya. We endeavored to examine whether such human rights and freedoms as expression, peaceful assembly, and association were recognized in Kenya's constitution and in other basic laws, and whether there were significant violations and/or severe restrictions on the exercise of one or more of these rights through government intimidation, intrusion, harassment or threats.

Guarantees: Notably, there was an array of freedoms and rights that were entrenched, protected and guaranteed in the constitution and supplementary legislation in Kenya. The Constitution of Kenya 2010 was argued to be a progressive and liberal one – fit as a framework for promoting the realization of various rights and freedoms for Youth & Child Rights CSOs. It spelled out an elaborate and expanded bill of rights. Its promulgation in 2010 was seen to have brought renewed hope for increased accountability and openness of government and better guarantee of rights and freedoms including those of Youth & Child Rights CSOs. However, a significant proportion of those involved in this study maintained that the constitution is given life by subordinate legislation. As such it is the implementation process that was most crucial in actualization of such constitutional guarantees.

I have always seen Kenya to be one of those countries in Africa where the environment for Civil Society is more relaxed and liberal. However, over the past 2 years, I have read and heard about tighter regulation of Civil Society. – *KII-CSO-Respondent, Thursday 3 November 2016*

Restrictions: There was however a common perception amongst Youth & Child Rights CSOs that their freedoms and rights were granted in law but in reality, they were increasingly being actively curtailed. Such CSOs as Siasa Place, Anti-Human Trafficking Advocacy, AWID, Africa Youth Trust (AYT) indicated that they had witnessed actions by government that significantly meant that certain Youth & Child Rights CSOs including their own could not effectively carryout their work. They admitted nonetheless that this was not necessarily severe and obstructive to the extent that they wouldn't operate.

The current government has taken us back in terms of rights and freedoms. There have been multiple reports of disruptions of peaceful meetings held by CSOs despite due notice to relevant institutions of government as required by law. – *KII-CSO-Respondent, Monday 7 November 2016*

Some of the most evident mechanisms that appeared to be employed by government to restrict rights and freedoms of CSOs including Youth & Child Rights organisations included: litigation, invocation of national security, political intimidation, legislation, and limitation of resources available to CSOs and the leveraging of state powers over the registration process to cut off certain CSOs. Regarding litigation, it emerged that there were multiple court cases sponsored by people linked to the current regime that were aimed at significantly clipping the wings of CSOs including some Youth & Child Rights CSOs and their representatives. A notable example was Pawa 254 whose CEO had been reportedly involved in multiple law suits Some of such court cases involved the invocation of frivolous elements of the law like a clause in Section 29 of the Kenya Information and Communications Act – *'misuse of a licensed communication*

*gadget*¹². One respondent quipped that “this government and its operatives are notorious for litigations against CSO people, media etc that are critical of their dealings”. Regarding legislation, respondents were of the view that government, over the past three years, had sponsored bills and amendments to existing legislation that actively limited or portended significant limitations to the enforcement and realization of rights and freedoms of Youth & Child Rights CSOs. Another respondent claimed that “in 2014 alone, over 54 amendments targeting even more drastic measures aimed at limiting the space for CSOs and making the environment hostile were proposed by entities sponsored by or sympathetic to government”. Some of such amendments targeted some state agencies for empowerment with more powers to tighten the grip on Youth & Child Rights CSOs. Such proposed amendments as those for the PBO Act 2013 and CAP 22 - Films and Stage Plays Act¹³ were argued to give an indication of direct or implicit intentions of government to limit rights and freedoms of CSOs. One youth led CSO – the New Image Youth Organisation involved in advocacy work through film argued that amendments proposed for the Films and Stage Plays Act would make it extremely difficult to work, in terms of costs and compliance. Others like AYT, Youth Advancement Initiative, KCDF, Vision Changers Kenya, NAYA and Den of Hope maintained that such amendments as for the capping of resources from external streams to 15% would make it almost impossible for many Youth & Child Rights CSOs to operate. This would affect especially Youth & Child Rights CSOs that are young and not yet sufficiently established.

Figure 1: Excerpts from Statute Law (Miscellaneous Amendments) Bill 2014

Included in the Statute Law (Miscellaneous Amendments) Bill 2014:

Article 27A.

- (1) Any funding of a public benefits organization shall be made through the federation and not by any individual member organization
- (2) A public organization shall not receive more than 15% of its total funding from external donors
- (3) Notwithstanding subsection (2) the Cabinet Secretary responsible for finance may approve receipt of an amount of more than 15% where there are legitimate and compelling reasons for increasing the amount.

It emerged as well that increasingly, security priorities of the government and other ideals held by some powerful entities with significant access to government were being used to deny rights and freedoms of CSOs. Security concerns had been used by government to limit rights and freedoms of CSOs especially those engaging Muslim populations. Many respondents argued that in many cases, reasons given justifications by government for interference were usually speculative and not factual.

They will not deny you your rights outright, but exploit loopholes in the law and policies and regulations and control over key government institutions to curtail your rights. For example they will use GSU to scare away people who want to hold peaceful protests or meetings, even after providing notification to police. This scares away the public from exercising their rights in future meetings. – *KII-CSO-Respondent, Monday 7 November 2016*

However, it was also underscored by a significant proportion of the respondents that there was evidence of CSOs, in multiple instances flouting policy, regulations and the law in the manner in which they

¹²D Kiprono ‘Misuse Of Licensed Telecoms Device’ Abuses The Constitution’ *The Star* 01 February 2016 [Online] available at: http://www.the-star.co.ke/news/2016/02/01/misuse-of-licensed-telecoms-device-abuses-the-constitution_c1285726 Accessed on 15-11-2016

¹³JC Ghai ‘Charting the way ahead for the regulation of films’ *The Star* 15 October 2016 [Online] available at: http://www.the-star.co.ke/news/2016/10/15/charting-the-way-ahead-for-the-regulation-of-films_c1437119 Accessed on 15-11-2016

operated. These were understood to invite punitive responses from the state that were viewed by some Youth & Child Rights CSOs as restrictive yet not necessarily so. These included institutional arrangements such as for reporting and other forms of compliance that were not followed through by Youth & Child Rights CSOs which invited confrontations from government agencies like the NGOs Coordination Board.

If CSOs want to hold government and other agents to account, they must be ready to live by the same ideals. – *KII-CSO-Respondent, Wednesday 17 November 2016*

Hostilities between CSOs and government: It is an agreed notion that healthy democracies thrive on some level of tension between government and civil society.¹⁴ It emerged however, that government perceived civil society as overly against it and not interested in constructive criticism. This was argued to be a significant driver of limitations of rights and freedoms of CSOs including Youth & Child Rights organisations experienced since the current administration rose to power in 2013. Notably, hostilities between the government and civil society were traced back to involvement of some CSOs in advocating for justice for the victims of post 2007 election violence at the International Criminals Court (ICC) and in 2013 when some enjoined in the Supreme Court petition challenging the outcome of the Presidential election¹⁵. Hostilities were also linked to a perception by the current regime that some CSOs were being leveraged by foreign entities to undermine government and effect regime change. As such, some of the restrictions and limitations to the rights and freedoms of Youth & Child Rights CSOs were attributed to government paying back with punitive policies, litigation and political intimidation targeted at CSOs especially those focused on advocacy or governance work. It was notable however that whilst such hostilities emanated from uneasy relations between government and a few CSOs, the impact was felt across the board including by Youth & Child Rights CSOs, some of which were not necessarily involved in significant ways in the ICC process and other governance advocacy work.

The current government is resistant to being called to account. Civil society did not want it to get into power on accounts of Chapter 6 of the constitution. – *KII-CSO-Respondent, Wednesday 9 November, 2016*

Current regime sees CSOs as opponents. This has propagated a sour relationship between them. There is a prevailing strong perception that CSOs are destabilizing it which has made it extremely difficult for NGOs to engage government. – *KII-CSO-Respondent, Friday 4 November 2016*

Government discretion over rights and freedoms: Apparently, there was significant discretion and power in the hands of government that it leveraged to limit the rights and freedoms of CSOs including Youth & Child Rights organisations. Many respondents confirmed that government officers invariably exploited legislative and policy loopholes to confer themselves power over CSOs that in many instances was not necessarily legal or procedural. In multiple cases politicians reportedly used state agencies like the national police service to prevent Youth & Child Rights CSOs from realizing some of their rights and

¹⁴ L Diamond *Developing democracy: Towards consolidation* (1999) Baltimore: Johns Hopkins University Press
T Behr & A Siitonen 'Building Bridges or Digging trenches? Civil Society engagement after the Arab Spring' (2013) FIAA Working Paper

PSL Thang 'The Role of Civil Society in Promoting Democracy, Good governance, Peace and National Reconciliation in Myanmar' unpublished Masters Thesis, University of Agder, 2013

¹⁵S Allison 'Kenya: Top official threatens civil society activist at ICC' *Daily Maverick* 22 November 2016 [Online] available at: <https://www.dailymaverick.co.za/article/2016-11-22-kenya-top-official-threatens-civil-society-activist-at-icc/#.WKslpVV95hF>

freedoms for example through disallowing peaceful assembly despite due notice provided. Some 15 Youth & Child Rights CSOs involved in a Focus Group Discussion in Kisumu described how some of their meetings and peaceful demonstrations had been disrupted or disallowed by police sometimes through violent dispersion in the form of tear gas and police using even live bullets that got some people hurt.

2.1.2 Legal and Regulatory Environment: Implementing Rights and Freedoms affecting Youth & Child Rights CSOs.

CSO formation and registration: A critical component of the operating environment for Youth & Child Rights CSOs is the availability of an enabling law on registration augmented with a sufficient framework of systems that allow Youth & Child Rights CSOs to easily register in practice. An enabling law is considered as that which includes voluntary registration allowed for any legal purpose; requires a small number of founders and/or small amount of assets; based on reasonable, transparent, objective criteria; and providing avenues for appeal.

Notably, the existing law in Kenya – the NGO Coordination Act 1990 provided a framework for registration of CSOs that spelled out compliance requirements, guidelines for selection of areas to work as well as areas to focus on. As such there was a functional law governing and facilitating formation and registration of Youth & Child Rights CSOs. Some Youth & Child Rights CSOs argued that compared to the past, formation and registration had improved considerably. The process was reportedly more automated and open.

The government has really improved in terms of duration of registration although there is room for improvement. Government of Kenya could make the registration process assume the fashion of the Huduma Centres. – *KII-CSO-Respondent, Thursday 15 November 2016*

Nonetheless, considering the proliferation of CSOs including Youth & Child Rights CSOs and the increasing complexity of issues they seek to deal with, stakeholders felt that the law needed to be repealed or subjected to a significant set of amendments for it to be more responsive and efficient in processing registration applications for Youth & Child Rights CSOs.

Many Youth & Child Rights CSOs felt that the framework for registration remained unnecessarily slow and vested a lot of discretionary power on the Non-Governmental Organizations Co-ordination Board and other related institutions involved in the process like National Intelligence Service (NIS). Such power was reportedly being increasingly exploited to limit rights and freedoms around formation and registration. The registration process allowed for validation through background checks that could take six months or more. Such delays were attributed to bureaucratic delays and to the absence of a legal or policy regulation that limits the length of time an application can take before a decision is provided. Moreover, CSO registration was perceived to involve a lot of compliance requirements compared to other registration processes like in the private sector. Some Youth & Child Rights CSOs like Siasa Place and a regional youth network that opted to respond on anonymity also argued that the framework of registration was still very limiting and as such many Youth & Child Rights CSOs struggled with electing the right modalities/type that suits them. As such some opted for what was easy rather than what best suited their work. Some Youth & Child Rights CSOs also felt that the process could be made more efficient like for private sector entities that now enjoy efficient service through the Huduma centres. The issue of cost also emerged as a significant challenge for many of the Youth & Child Rights CSOs involved in the study. Such CSOs like Den

of Hope, Youth Advancement Initiative, Vision Changers Kenya, New Image Youth Organisation and New Breed Generation indicated that for many youth CSOs that were just being formed, raising 16,000 shillings to register plus other associated costs like 4,000 shillings for setting up accounts was a challenge that needed to be addressed. Such cost implications apparently prevented some Youth & Child Rights CSOs from upgrading from CBOs to NGOs through which they could attract more resources and make more impact. It emerged as well that there was a lot of emphasis on security considerations which was tasked to the NIS that apparently took unnecessarily long to provide reports on background checks.

There are also internal policy issues interfering with the registration process. Most often, common bureaucratic challenges that governments face world over have translated into frustrations for CSOs especially in terms of registration. – *KII-DP-Respondent, Friday 18th November 2016*

Security, morals and politics play a significant role in the process and ease of registration of CSOs. If you are looking to register an outfit focused on 'controversial issues' like LGBTI rights [morals], governance [politics], extrajudicial killings e.g. of Muslims [religion], you will face difficulty. – *KII-CSO-Respondent, Tuesday 8 November, 2016*

There were strong reactions regarding the conduct of the Non-Governmental Organizations Co-ordination Board especially on the credentials and right of office of some of its key officers which were argued by many respondents to be undermining effectiveness its operations. There were also some allegations of corruption in the process of registration, albeit unsubstantiated, that were argued to be skewing the process to benefit those with resources and to be risking the integrity of the sector as some Youth & Child Rights CSOs engaging in dodgy activities obtained registration unduly.

Many of the Youth & Child Rights CSOs engaged in the study argued that the PBO Act 2013 portended a more favourable environment for CSOs when commenced and implemented as it contains provisions that could address many of the challenges facing the sector.

Figure 2: The Public Benefits Act 2013¹⁶

The Public Benefits (PBO) Act 2013 portends a more progressive framework for strengthening and promoting a multistakeholder approach to development effectiveness where CSOs play a meaningful role. The development of the Act involved wide consultations between government, civil society and other entities.

The Act provides for, among other things:

- Acknowledgement of service, capacity building and advocacy roles of PBOs across all sectors
- One identity for allows different types and forms of CSOs doing public benefit work to operate under on single act and allows PBOs to determine standards, certification and a professional code of conduct
- High levels of public disclosure, accountability and transparency by PBOs: demands good leadership and accountability from PBOs and provides for regulator in line with the Spirit of Chapter 6 of the Constitution
- An institutional framework for co-operation and shared responsibilities between the government, development partners and stakeholders in their dealings with PBOs

Source: CS Reference group, PBO Act, 2013

¹⁶The Public Benefit Organizations Act No 18 of 2013 [Online] available at: <http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/PublicBenefitsOrganisationNo18of2013.PDF>

CSO Operations: An enabling environment for Youth & Child Rights CSOs spans beyond ease of formation and registration to more practical freedoms regarding their operations like decisions on where to work, in what sectors and with what mandate. CSO operations imply the capacity to govern, implement and assess activities consistent with their mandates. We sought to establish the extent to which Youth & Child Rights CSOs were free to operate, in law and in practice, without excessive administrative burdens and/or government interference. We also sought to determine whether such interference in their operations, where they materialized, were perpetrated by the state and other actors for political or arbitrary reasons and whether there were sufficient avenues for legal recourse against such interference.

The general outlook in Kenya was that Youth & Child Rights CSOs were able to form, register and freely operate without severe restrictions from government. There were constitutional provisions, legislation, and institutions of the state that existed to promote the right and ability of Youth & Child Rights CSOs to operate freely. Moreover, such institutions as the Judiciary and the Commission on Administrative Justice (Ombudsman) provided avenues and recourse for appeals where rights of Youth & Child Rights CSOs were infringed. This was exemplified in multiple occasions when CSOs including Youth & Child Rights organizations had gone to court to challenge restrictive actions by government to limit such rights and freedoms as peaceful assembly, association and rights to operate. There was evidence that such cases were fairly adjudicated through the country's judicial system. Some examples included litigations that involved leaders of such CSOs as Pawa 254, Haki Africa and Muhuri dropping of frivolous charges and release of members of CSOs unduly arrested for involvement in picketing like for Den of Hope.

Shrinking space and dichotomy of CSOs: Actors in the sector however indicated that they were increasingly worried about a tendency towards active shrinkage of the space for operation of CSOs including Youth & Child Rights organisations.

The environment before this administration was relatively free and CSOs were able to strike good working relations with government. For example CSOs were involved to a great extent in the constitutional review process. However the CSO operation space is now increasingly shrinking. Everyday a window is closing. – *KII-CSO-Respondent, Friday 18 November 2016*

There is more intolerance to CSOs coupled with more scrutiny. This is largely not objective but more like a crackdown on Civil Society. – *KII-DP-Respondent, Wednesday 23 November 2016*

Foremost, it appeared as though the guarantee and realisation of rights and freedoms of Youth & Child Rights CSOs in practice was a function of their belonging to either of two distinct categories – as Youth & Child Rights CSOs involved in service provision or those engaged in advocacy. Respondents argued that this dichotomy was very important in understanding the operations of Youth & Child Rights CSOs, their image and their interactions with government. It was apparently a strong indicator of the extent to which rights and freedoms of Youth & Child Rights CSOs were guaranteed and realisable or restricted in practice.

There was a perception that most often, rights and freedoms were guaranteed for Youth & Child Rights CSOs involved in service provision based on a claim that they were viewed by government as partners performing a complementary role. Conversely, for Youth & Child Rights CSOs engaged in advocacy for justice or good governance, the actualization of their rights and freedoms was not guaranteed. As such, the ability of Youth & Child Rights CSOs, at the time of and after registration, to freely choose where, with

whom and with what mandate to work depended a lot on the type of CSO they wished to register in terms of activities to focus on.

In matters regarding the environment within which CSOs operate in Kenya, people often make the erroneous assumption that CSOs are homogenous and that the term civil society can reflect the image of the entire sector. – *KII-CSO-Respondent, Thursday 17 November 2016*

There are two categories of CSOs; service sector NGOs and advocacy CSOs. The former are widely embraced and relate well with government. The latter are always seen as an enemy of the state. Their rights and freedoms depend on the extent to which they are critical of government. The nature of work of a CSO determines how the government treats them. – *KII-CSO-Respondent, Thursday 17 November 2016*

Choice of focus sectors and location: Whilst the registration process was reportedly flexible and open to freedom of choice for activities and who to work with, it emerged that some specific regulations in the process of registration implicitly meant significant limitations to choice of focus areas and geographic location of work. As indicated by one respondent, “once you specify the counties where you seek to work, you are tied to those areas and the activities or objectives you elect to focus on”. Some Youth & Child Rights CSOs indicated that a lot changes between the point of registration and many years into the life of the organization that sometimes require adjustments for example about what locations are best suited for their work or areas of immediate need. However, Vision Changers Kenya indicated for example that getting the NGOs Coordination board to reflect changes in implementation areas was difficult and sometimes where the board got information that some CSOs are operating in areas originally not indicated, there were potential problems.

However, a significant proportion of respondents also maintained that this practice, by the board, was good because it allowed government to monitor the work of CSOs and for them to gain depth in the areas where they work rather than spreading themselves thin. Many of the Youth & Child Rights CSOs that were against this regulation argued that despite its noble intent, it tied them down and potentially limited their space for growth and ability to expand coverage of their work where it was deemed necessary.

Interference in CSO operations: There were multiple instances of government interference in the operations of Youth & Child Rights CSOs that were reported by Youth & Child Rights CSOs. Such interferences came in the form of suspension of registration, freezing of accounts, refusal of work permits for expatriate program officers for certain CSOs including Youth & Child Rights CSOs, arbitrary arrest of leaders of CSOs, as well as disruption of lawful meetings held by CSOs (See Table below for examples). Most of these were attributed by government to CSOs flouting regulations like reporting and engaging in unlawful activities or those that are detrimental to national security. Notably, for many of the cases, sufficient evidence was not produced by government to follow through and back their actions and as such led to the reversal of such decisions. The absence of substantive evidence was understood amongst Civil Society respondents as an illustration of harassment. Continuing reforms in the Judiciary were cited as positive steps towards promoting and protecting an enabling environment for Youth & Child Rights CSOs since the Judiciary a fall back line of defense for Youth & Child Rights CSOs whenever their rights and freedoms were infringed both in the enactment of laws and enforcement of policy.

Also, some respondents claimed that it was becoming increasingly difficult to hire foreign employees due to restrictions and threats of cancellation and denial of work permits.

Table 2: Some evidence of recent interferences in CSO operations by government

Type of interference	Evidence
Suspension of registration/deregistration	<p>900 NGOs face de-registration over account queries - http://www.capitalfm.co.ke/news/2015/10/900-ngos-face-de-registration-over-account-queries/</p> <p>Kenya De-Registers 15 NGOs Over Terror Links http://allafrica.com/view/group/main/main/id/00034554.html</p>
Freezing of accounts	<p>Kenya freezes Sh300m for axed NGOs http://www.standardmedia.co.ke/article/2000145112/kenya-freezes-sh300m-for-axed-ngos</p> <p>Kenya freezes assets of groups and individuals suspected of funding Islamic extremists http://www.foxnews.com/world/2015/04/08/kenya-freezes-assets-groups-and-individuals-suspected-funding-islamic.html</p> <p>Kenya: Government must unfreeze assets for NGOs after Court ruling https://www.amnesty.org/en/latest/news/2015/06/kenya-government-must-unfreeze-assets-for-ngos-after-court-ruling/</p>
Refusal of work permits for expatriate program officers	<p>Foreigners risk losing jobs as government enforces tough work permit law http://www.nation.co.ke/news/Foreigners-risk-losing-jobs-govt-enforces-work-permit-law/1056-3260264-la157i/index.html</p> <p>Board threatens to deport expats as lobbies criticize new order on NGOs http://x254.co/2016/06/24/board-threatens-to-deport-expats-as-lobbies-criticize-new-order-on-ngos/</p> <p>Kenya is pressuring thousands of expat NGO workers and volunteers to go home https://qz.com/716518/kenya-is-pessuring-thousands-of-expat-ngo-workers-and-volunteers-to-go-home/</p>

Administrative burdens on operations of Youth & Child Rights CSOs: Regarding the ability of Youth & Child Rights CSOs to operate freely, without excessive administrative burdens, it emerged that certain compliance requirements enforced by the NGOs Coordination Board were somewhat demanding. Such compliance modalities included submission of annual reports, requirement for approvals for account opening by the NGOs Coordination Board on top of normal tax obligations. Some Youth & Child Rights CSOs like Youth Advancement Initiative and Vision Changers Kenya argued that the requirement to pay 2,000 shillings just for filing reports was unfair especially for such small organizations that already had funding challenges. Others also argued that such institutions of government as the NGOs Coordination Board received proportions of the national budget to facilitate their activities (including monitoring of CSOs) and as such it was unfair to double charge CSOs.

The respondents from government however argued that it is important that government is aware of what Youth & Child Rights CSOs as such requirements for reporting and approvals of accounts are in order. Also because CSOs lack effective self-regulating mechanisms through which they would ensure their peers do their due diligence.

Not all CSOs abide by the law and do what they saw they do. It is the job of government to protect the public from such. As such, strict enforcement of compliance is not necessarily a bad thing. It is the job of government to ensure that Civil Society Organizations work towards the benefit of the public. – *KII-Government-Respondent, Wednesday 17 November 2016*

Expression of views: Attainment of an enabling environment for civil society must include a guarantee of the right to freely express their views without fear of victimization as well as self censorship. We investigated the extent to which legal or political barriers were being employed to hinder ability of Youth & Child Rights CSOs to openly express their opinions, particularly on matters critical of government policies. Notably, the environment remained largely open for civil society to voice their opinions even on issues critical of government. The Constitution of Kenya guaranteed the freedom of expression which applied equally to Youth & Child Rights CSOs. Where rights to freedom of expression were infringed, the existing judicial system appeared able to allow avenues for recourse and effectively adjudicate such cases. Of the five Eastern African states, Kenya remained perhaps the most open in terms of space for expression for civil society and other non-state actors including ordinary citizens. The Freedom House Index Report 2016 allocated Kenya an aggregate score of 4 reflecting a partly free freedom status¹⁷.

Table 3: Freedom House Index ratings (2012 - 2016) - East Africa

State	2012*	2013	2014	2015	2016
Burundi	Not Free (52)	Party Free (5)	Party Free (4)	Not Free (5)	Not Free (6)
Rwanda	Not Free (82)	Not Free (6)	Not Free (5)	Not Free (6)	Not Free (6)
Kenya	Party Free (52)	Party Free (4)	Party Free (4)	Party Free (4)	Party Free (4)
Tanzania	Party Free (49)	Party Free (3)	Party Free (3)	Party Free (3)	Party Free (4)
Uganda	Party Free (57)	Party Free (4)	Party Free (4)	Not Free (5)	Not Free (5)
* - 2012 grading is by position (1) – represents the most free and (7) – represents the least free rating					

Source: Freedom House

Nonetheless, there was a strong perception that it was increasingly becoming difficult for CSOs, including Youth & Child Rights organisations to express themselves freely especially on matters relating to demands for accountability and good governance. There were those who argued that overtime there had been steady closure of civic spaces and as such Youth & Child Rights CSOs were increasingly having reservations about how to express themselves on matters that would appear critical of government. This observation was made across the board by most of the Youth & Child Rights CSOs engaged in the study. Most of them feared legal repercussions as well as deregistration for making pronouncements especially those related

¹⁷ Freedom House 'Anxious Dictators, Wavering Democracies: Global Freedom under Pressure. Freedom in the World in 2016' (2016) Freedom House [Online] available at: https://freedomhouse.org/sites/default/files/FH_FITW_Report_2016.pdf

to governance issues. The insistence of most of the Youth & Child Rights CSOs involved in this study to maintain anonymity was substantive proof of this finding.

Regionally, in terms of the environment for CSOs, Kenya is relatively doing well. However, internationally, and compared to other epochs in the history of Kenya, environment for CSOs currently is difficult. Freedom of expression and association and peaceful assembly is substantively curtailed. – *KII-DP-Respondent, Thursday 17 November 2016*

Many respondents argued that though it was still not severe, there was an increasing trend of application of legal and political barriers to hinder CSOs including Youth & Child Rights from freely expressing their opinions. This had led some Youth & Child Rights CSOs to resort to self-censorship or to ‘smoothing’ their opinions for them to be taken into consideration and to stay in ‘good books’ with government. There were accounts of politicians threatening CSOs perceived to be antigovernment, including demanding statements in parliament on CSOs perceived to be overly pursuing governance and accountability issues. There were reports of legal barriers applied actively to limit rights and freedoms of CSOs such like slander and libel litigations even where there was evidence of impropriety from government or government officers or politicians. There was a feeling amongst some respondents that this was increasingly stifling progress amongst Youth & Child Rights CSOs especially in areas regarding research and advocacy. Some Youth & Child Rights CSOs involved in the study commented that increasingly CSOs were adopting softer positions on some issues and electing not to use such methods as aggressive activism to promote their agenda due to eminent threats and perceived repercussions.

Table 4: Some evidence of recent barriers to freedom of expression by CSOs

Barriers	Some recent instances
Political barriers	<p>State targeting us over support for Hague cases, civil society protests</p> <p>http://www.nation.co.ke/news/politics/Civil-Society-ICC-Hague-Cases-Jubilee-Government/1064-2499628-4vera8z/index.html</p> <p>Uhuru's threat to NGOs is reminiscent of Moi's crackdown in 1995</p> <p>https://www.standardmedia.co.ke/ureport/story/2000139614/uhuru-s-threat-to-ngos-is-reminiscent-of-moi-s-crackdown-in-1995</p> <p>LSK faults Uhuru Kenyatta for fighting NGOs role in 2017 polls</p> <p>http://www.nation.co.ke/news/LSK-faults-Uhuru-Kenyatta-for-fighting-NGOs-role-in-2017-</p>
Legal barriers	<p>Deputy President William Ruto sues activist Boniface Mwangi for defamation</p> <p>https://www.standardmedia.co.ke/article/2000218856/deputy-president-william-ruto-sues-activist-boniface-mwangi-for-defamation</p> <p>Boniface Mwangi sued for disrespecting police spokesperson</p> <p>http://www.nation.co.ke/news/Jubilee-activist-sues-Boniface-Mwangi/1056-3428470-lvn8p6z/</p> <p>Boniface Mwangi sued for posting ‘anti-peace’ messages on Twitter</p>

https://1newskenya.com/boniface-mwangi-sued-for-posting-anti-peace-messages-on-twitter/

When we had a case in court challenging an Act of Parliament, it suddenly became apparent that there were issues with our registration that we needed to respond to at the NGOs Coordination Board – *KII-CSO-Respondent, Thursday 7 November 2016*

The state is trying to consolidate power at all costs. It does not want to be challenged from any quarter and to control the narrative. The process of actualizing this includes limiting freedoms as expression, peaceful assembly amongst others – *FGD-Sub-national Youth & Child Rights CSOs, Wednesday 7 December 2016*

Nonetheless, there was consensus amongst respondents that compared to the total population of CSOs in the country, these instances and the Youth & Child Rights CSOs involved represented a small percentage which could not back a general indictment of the overall environment within which all Youth & Child Rights CSOs operate in Kenya. From an overall perspective of the country, there was agreement that the larger proportion of Youth & Child Rights CSOs remained enabled by law to carry out their activities and to execute their mandate without severe interference from government.

Access to resources for Youth & Child Rights CSOs: Resources form an integral part of the operations of Youth & Child Rights CSOs. There is evidence of situations across the globe where there is active limitations to access to resources for Civil Society. In such environments, CSOs are ineffective and weak. We investigated the status of access to resources for Youth & Child Rights CSOs in Kenya probing as to whether there were legal, policy or political barriers to access resources, including from foreign streams.

It was apparent that there were no severe restrictions on access to resources for Youth & Child Rights CSOs. They continued to enjoy the benefits of the financial system in the country without undue limitations as long as they complied with tax obligations and other finance sector laws and requirements from the NGOs Coordination Board. Youth & Child Rights CSOs were largely free to source for funding and apply them to execute their mandates without legal or political limitations government.

So far so good; I have not seen any severe restrictions on access to resources for CSOs by government. I am aware of state sponsored amendments to the yet to be commenced PBO Act that would pose significant challenges to access to resources by CSOs if they were allowed into the Act. – *KII-CSO-Respondent, Thursday 18 November 2016*

Nonetheless, there were fears of an increasing trend of threats that appeared as though there was intent in government to limit access to resources for CSOs. There were multiple accounts of unsubstantiated claims by government officers and politicians sympathetic to the current regime that CSOs including some Youth & Child Rights organisations were receiving resources from external entities meant expressly for frustrating and destabilizing the current government. Such allegations were apparently leveraged by government as the basis for reported attempts to limit access to resources.

There were laws and amendments to existing or proposed legislation that appeared to be targeted at limiting access to resources for CSOs. A prominent example was the proposed amendments to the PBO

Act 2013 that sought to cap resources from external sources for Youth & Child Rights CSOs to 15% despite knowledge that nearly 90% of Youth & Child Rights CSOs funding in Kenya streamed from external sources.

Attempts have been made to cap resources available for CSOs from external sources at 15%. If passed it would mean a complete shutdown of most of the CSOs in the country as they depend largely on external resource streams. – *KII-DP-Respondent, Wednesday 23 November 2016*

Most of the respondents argued that the implications of the amendments to the Act would be more severe for many Youth & Child Rights CSOs because most of them were fairly young organizations without established modalities for resource mobilization and were already experiencing resource challenges even without the restrictions proposed by the amendments to the PBO Act.

Table 5: Some recent claims by government of external influence in CSOs

Government stops Sh2b US-funded elections programme http://www.nation.co.ke/news/politics/Government-stops-Sh2b-US-funded-elections-programme/1064-3491764-ao251xz/
Let's Classify NGOs As Foreign Agents http://www.the-star.co.ke/news/2015/11/23/lets-classify-ngos-as-foreign-agents_c1247143
Foreigners plotting regime change in Kenya – Uhuru http://www.the-star.co.ke/news/2016/12/13/foreigners-plotting-regime-change-in-kenya-uhuru_c1472184
Kenya freezes Sh300m for axed NGOs http://www.standardmedia.co.ke/article/2000145112/kenya-freezes-sh300m-for-axed-ngos
Kenya freezes assets of groups and individuals suspected of funding Islamic extremists http://www.foxnews.com/world/2015/04/08/kenya-freezes-assets-groups-and-individuals-suspected-funding-islamic.html

Resources from external sources are viewed by the state as meant to oppose government and as such frowned upon and used as a pretext to intimidate Youth & Child Rights CSOs, legally and politically. – *KII-Media-respondent, Thursday 17 November 2016*

Diminishing Official Development Assistance (ODA) flows: It emerged that ODA flows to Kenya, that Youth & Child Rights CSOs largely depend on, had been diminishing over the past four years creating significant resource access challenges for Youth & Child Rights CSOs in the country. Computations based on data from OECD-DAC's Creditor Reporting System (CRS) indicated that ODA flows to Kenya through NGOs and other Youth & Child Rights organisations had fallen from US\$636 million in 2013 to US\$503 in 2015 with further projections of declining flows through to 2018.¹⁸

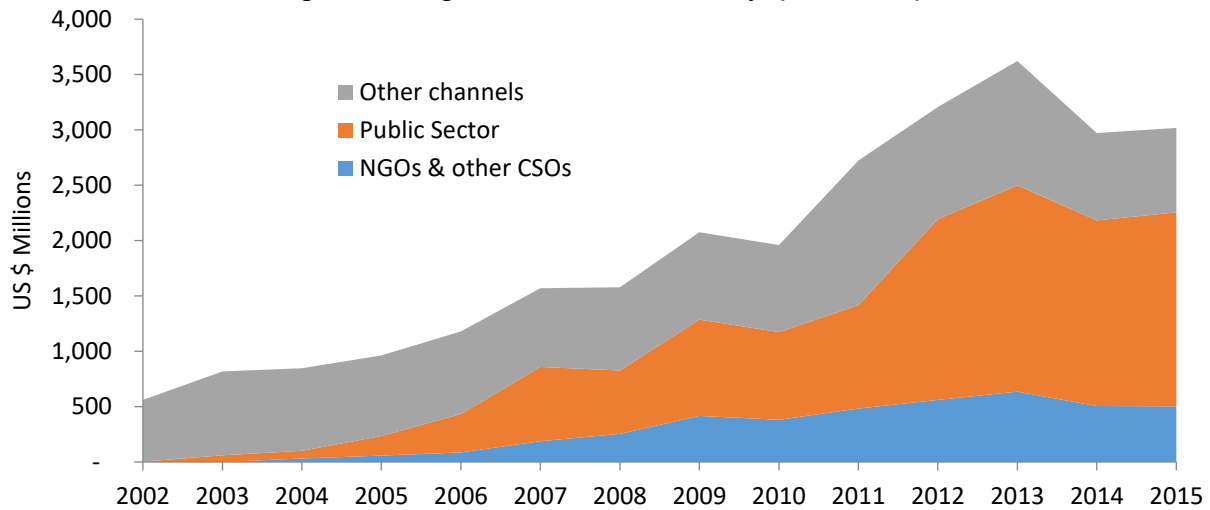
¹⁸OECD 'Creditor Reporting System' OECDSTAT [Online] available at: <https://stats.oecd.org/Index.aspx?DataSetCode=CRS1#>

Global trends of diminishing resources and appetites for aid have had significant impacts on the resources available for CSOs who are heavily dependent on donors. – *KII-DP-Respondent, Thursday 17 November 2016*

In fact many Youth & Child Rights CSOs were reportedly in financial trouble and were facing substantive sustainability crises. These trends were linked by many respondents to increasing trends of diminishing resource flows to developing countries following the global financial crisis in 2008 and political-economic turmoil in many of the globes developed nations from which foreign aid has usually emerged.

The diminishing ODA flows were also attributed to an apparent apathy by donors about the political-economic situation in Kenya. Some donor respondents indicated that there were glaring reports of misuse of external resource flows – both on the part of government and also amongst some CSOs including some Youth & Child Rights CSOs that painted a very negative picture that discouraged further partnerships.

Figure 3: ODA gross disbursements to Kenya (2002 - 2015)



Source: OECD – Creditor Reporting System

There was also an indication that resource flows from external sources were increasingly being channeled through government either through budget support or through government programmes. Some Youth & Child Rights CSOs argued that this trend was denying civil society much needed funding. The trend was however justified by most of the donor respondents who maintained that it was in line with the Global Partnerships for Effective Development Cooperation (GPEDC) ideals agreed upon in 2012 in Busan. The GPEDC outcome committed to increasing effective partnerships with recipients and country ownership that meant that more resources be channeled through government and invested in plans like the Medium Term Plans (MTP II) and Vision 2030. As such many donors were increasingly in favour of channeling resources through government agencies rather than CSOs. This had profound implications on the volume of resources channeled into the country that Youth & Child Rights CSOs could benefit from.

Domestic Resource Mobilization for Youth & Child Rights CSOs: Considering the challenges Youth & Child Rights CSOs in Kenya reportedly had to deal with in terms of diminishing external resource flows, efforts aimed at mobilizing resources domestically to bridge the gap would be prudent. We probed for existence of legal or policy incentives to promote local resource mobilization and financial sustainability among

Youth & Child Rights CSOs. Notably there were reservations regarding the efficacy of local fundraising or domestic resource mobilization for civil society activities in Kenya.

Foremost there were little if no legal and policy incentives for promoting local resource mobilization for Youth & Child Rights CSOs. Also, Youth & Child Rights CSOs argued that they were not receiving sufficient leaves in terms of the tax regime commensurate with their contribution in public benefits work. Secondly there was an impression that civil society had failed to strike a favorable relation with local corporate entities and philanthropists that would support their local resource mobilization agenda.

Nonetheless, there were reports of foundations and Corporate Social Responsibility initiatives that provided substantial funding to Youth & Child Rights CSOs for programmes in education, health, water sector as well as for entrepreneurship for young people. A number of Youth & Child Rights CSOs indicated that they had received funding, albeit minimal, from such local foundations as the Safaricom Foundation, KCB foundation amongst others. Others also mentioned that they had received in kind support (like free venues) for some of their activities from local corporate entities in the private sector. These initiatives were however argued to be ad hoc and unstructured in such a way that it was difficult to effectively align them to development priorities or needs outlined by Youth & Child Rights CSOs. Many Youth & Child Rights CSOs in the study also argued that a lot of such support was tightly linked to profit motives of private sector players involved which sometimes disallowed elements of their work were out of message or potentially undermined their core objectives.

Moreover, such initiatives by private sector did not benefit from significant legal or policy incentives from government that could motivate further resource domestic resource mobilization for Youth & Child Rights CSOs. Thirdly, many respondents argued that Youth & Child Rights CSOs were still not effectively communicating the merits of their work to the public and government. As such it was difficult to attract public support for domestic resource mobilization for their activities especially for Youth & Child Rights CSOs involved in governance and advocacy work.

2.1.3 Rights of Specific Groups

The guarantee, protection and realization of rights and freedoms of Youth & Child Rights CSOs that work with politically sensitive issues form an important dimension of an enabling environment for Civil Society. Most often, it is the rights of CSOs that advocate for or represent marginalized and vulnerable groups that experience significant barriers.¹⁹ CSOs involved in critiquing government policy and advocacy for policy change also often face significant limitations. We sought evidence of discrimination in the application of laws, regulations and policies for particular groups that advocate for policy change or represent marginalized and vulnerable populations. We probed also on the guarantee of the rights of Youth & Child Rights CSOs working with marginalized and vulnerable groups to fair administration of the laws and regulations, equal access to due process and the ability to seek redress.

Notably, there were sufficient guarantees for the respect of the rights of minorities and marginalized populations. Article 56 of the Constitution of Kenya 2010 provides that the State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups (a) participate

¹⁹CSO Partnership for Development Effectiveness *'GPEDC Indicator Two - Civil Society Operates within an environment that maximizes its engagement in and contribution to development: An Assessment of Evidence'* (2016) CPDE Working Group on CSO Enabling Environment & CPDE Working Group on CSO Development Effectiveness

and are represented in governance and other spheres of life; (b) are provided special opportunities in educational and economic fields; (c) are provided special opportunities for access to employment; (d) develop their cultural values, languages and practices; and (e) have reasonable access to water, health services and infrastructure.

Nonetheless, there was substantive evidence to show the lack of an enabling environment for Youth & Child Rights CSOs working with specific minority and marginalized populations.²⁰ Notably, limitations to the rights and freedoms of Youth & Child Rights CSOs working with such groups were driven by systemic and highly political mechanisms. There were reports of instances where specific actions had been taken, perpetrated by government or entities sympathetic to government, against organizations that represent vulnerable populations. These included arbitrary deregistration or suspensions of registration, freezing of accounts, arrest of leaders of such CSOs, punitive bonds/bails leveled on individuals from such Youth & Child Rights CSOs. There were also reports of human rights defenders facing threats, harassed, intimidated, criminalized or experiencing physical attacks on accounts of the conduct of their work. The Rights Promotion and Protection Centre (RPPC) for example gave accounts of extremely high bonds for releasing some human rights defenders.

There was also some evidence to show that Youth & Child Rights CSOs working on the rights of Muslims or Muslim Organizations were increasingly being harassed, intimidated politically and counter-terrorism legislation leveraged to actively limit their rights and freedoms in many cases unduly. Examples included experiences of such organizations as Muhuri and Haki Africa. There were also reports of threats and intimidation of some CSOs working with or representing LGBTI people most of which opted to remain unanimous.

It was however notable that marginalized groups were recognized in the policy-making processes and the Youth & Child Rights CSOs that represented or worked with them were offered policy some space to engage especially through affirmative action laws, regulations or policies. The state had reportedly demonstrated considerable level of openness, inviting Non-Governmental Organizations (NGOs) to participate in policy processes involving marginalized groups. Marginalised groups include ethnic minority populations and groups neglected by decades of public policy especially in the northern frontiers of Kenya. Nonetheless the many of the Youth & Child Rights CSOs maintained that they still experienced significant limitations in representation and lack of objectivity from the side of government.

2.2 Area Two: Policy Influencing

2.2.1 Spaces for Dialogue and Policy Influencing

The ability of to engage with governments on policy concerns through dialogue and advocacy is an essential area for consideration of enabling conditions for Youth & Child Rights CSOs. Institutionalized spaces for policy dialogue and inclusive processes for government-CSO consultations are critical ingredients of democratic ownership of public policy. Considerations of an enabling environment must not only take account of opportunities and processes for engagement, but also the resulting impacts on public policy. We investigated the extent to which government established inclusive institutionalized

²⁰International Service for Human Rights 'Kenya: Safeguard and encourage essential voices of human rights defenders' Human Rights Council 29th Session [Online] available at: <http://www.ishr.ch/news/kenya-safeguard-and-encourage-essential-voices-human-rights-defenders>

Y Niyiragira 'Current Challenges Facing the Civil Society in Kenya' (2016) Rosa Luxemburg Stiftung

processes at all levels both at sub-national and national levels accessible to all Youth & Child Rights CSOs to participate in policy and decision making processes.

There was a general impression that space for dialogue for Youth & Child Rights CSOs in policy and decision making was available. Public participation provisions in the constitution provided substantive opportunities for Youth & Child Rights CSOs to engage in policy making processes. Such policy making processes as the annual budget making process and the drafting of development plans, both at county and national levels, had guidelines and legal requirements for engagement of the public that included Youth & Child Rights CSOs. Various Youth & Child Rights CSOs involved in the study cited multiple policy forums that they had inserted into and participated especially at county levels.

Moreover, there were forums and engagement platforms that Youth & Child Rights CSOs could plug into in order to affect policy, albeit not strictly institutionalized. Such forums as Sector Working Groups, Development Partners Forums, Donor round tables and Aid Effectiveness Group meetings allowed ample opportunity for Youth & Child Rights CSOs to meet Development Partners and government and advance their ideas and policy suggestions. Although such platforms were not necessarily institutionalized, they were established out of partner engagements aimed at increasing opportunities for as many stakeholders as possible to participate in policy making processes. The legislature was also increasingly open to engagement with civil society and other members of the public. County Assemblies, National Assembly and Senate all allowed opportunities for Youth & Child Rights CSOs to make submissions, memorandums or petitions that had a chance of challenging or informing parliamentary processes. Within line ministries or sectors, there were processes through which civil society could engage, from early stages of policy development where Youth & Child Rights CSOs had the opportunity to carry out research and provide critical information for anchoring policies. They also had multiple chances for interrogating the content of different policies at different stages including as high as cabinet level where they could still lobby through rather personalized avenues.

Notably, such opportunities were available to all kinds of policies. They were available across the country at local, regional and national levels and there were no overt limitations on particular groups from identifying them and engaging accordingly. Some Youth & Child Rights CSOs like Den of hope, NAYA, Omega Foundation, Hope for Victoria Children (HOVIC), Pamoja Trust, Plan, New Image Youth Organisation, Vision Changers, KCDF, amongst others indicated that they had participated in multiple policy making forums especially within the devolved government structures. Such forums included budget making events, public hearings and county planning meetings. Others like Den of Hope even indicated substantive examples where they contributed to some policies and legislation like the Tobacco Control Act. New Image Youth Organisation indicated that they had engaged in the negotiations around the amendments to the Films Classification Act.

Where such opportunities for engagement of the public were not offered as required by law, there were avenues for recourse including through the judiciary. There were notable examples of litigations by members of the public challenging policy making processes that appeared not to allow opportunities for the public to participate accordingly. Contention however remained on the power and discretion in the hands of government in terms of selecting who to participate and to determine the modalities for engagement that profoundly impinged on the ability of Youth & Child Rights CSOs to effectively influence policy. Notably, for non-contentious policy processes, many Youth & Child Rights CSOs were freely allowed

to participate. However, for policy issues that invited controversy and competition of multiple interests, the space appeared constricted and only a select few Youth & Child Rights CSOs indicated that they had effectively participated.

Cosmetic policy engagement opportunities: It emerged that whilst opportunity for participation in policy processes were available, and that while Youth & Child Rights CSOs indeed found space to provide input, a lot of their ideas, policy suggestions and information did not find space in eventual policies. This was arguably due to significant limitations on the extent to which Youth & Child Rights CSOs could leverage available engagement opportunities for participation in policy processes to actually and meaningfully influence policy.

Foremost, there appeared to be a problem with the modalities for inclusion in policy engagement forums especially high level ones. Some respondents argued that modalities for inclusion in public participation forums were very restrictive and prevented meaningful engagement. Some striking examples included invitations that were made too prompt, lack of prior presentation of information about the subjects of deliberations and non-representative cherry picking of CSOs or citizens to participate. There was a broad perception that as they were, the spaces available for policy engagement with Youth & Child Rights CSOs were cosmetic rather than practical serious engagement forums that could yield substantive influence.

There is the tendency for 'credible CSOs' to be invited to such meetings. Most often, they are cherry-picked by government or donors depending on their relationships and the issues that they seek to canvas. - *Media FGD respondent-Nairobi, Monday 13 December 2016*

There is relative ease for CSOs to be engaged in policy making processes. The problem is with the modalities for engagement. It is more like window dressing. - *KII-CSO respondent, Thursday 16 November 2016*

The principle of 'path dependency' is often employed whereby those who are known for their work are often consulted. - *KII-DP respondent, Wednesday 23 November 2016*

Some respondents argued however that because of the democratic nature of the framework for participation, Youth & Child Rights CSOs need to accept that sometimes their ideas would not be incorporated. Many Youth & Child Rights CSOs maintained though that in many policy processes, government officers had 'fixed minds' that precluded careful consideration of inputs from them. Nonetheless, it was widely accepted that there were significant policy processes where inputs of Youth & Child Rights CSOs were evident and in fact quite substantive. These included the Constitution of Kenya review process, the development of the PBO Act 2013 that was largely CSO driven, Access to Information Act as well as the Public Finance Management Act 2012.

However, CSOs must acknowledge that policy making involves a lot of haggling, back-and-forths and concessions in order to have some of their inputs considered. Not all, all the time. - *KII-DP respondent, Wednesday 23 November 2016*

Avenues for recourse in policy making processes: In progressive policy making processes across the globe, stakeholders are allowed opportunity to challenge policy outcomes, especially on the basis of lack of inclusion of their contributions. We sought to interrogate the policy making environment to establish the extent to which CSOs including Children rights and Youth organizations were able to keep policy processes

accountable, conduct policy assessments and demand feedback aimed at ensuring that government consider their input.

There were notable avenues for recourse or appeal although they remain substantively difficult and expensive to pursue. Some of the main mechanisms and avenues for accountability for policy making processes cited included: tracking the policy process, using the media to put pressure, pursuing parliamentary caucuses or committees focused on the issue areas, lobbying for appeal through interest groups, litigation and brokering or creating more forums for dialogue between policy makers and Youth & Child Rights CSOs. In practice, most of these mechanisms were insufficient. Appeals through litigation for example depended on timing of appeals, strength of the cases, and public interest on the case and were prohibitively expensive for many Youth & Child Rights CSOs. Moreover, there was an indication that for the few that succeeded, the Youth & Child Rights CSOs responsible for them were often victimized. Such organizations as The Institute of Social Accountability (TISA) and national Tax Payers Association (NTA) indicated that they witnessed some backlash.

In the event of a successful appeal to a policy, there come ripple effects in the future like being treated with suspicion. - *Media FGD respondent-Nairobi, Monday 13 December 2016*

Capacity gaps limiting policy influencing: There were notable variations amongst Youth & Child Rights CSOs in levels of capacity for engagement in policy dialogue. This meant that the level of participation in policy making processes was varied. Established Youth & Child Rights CSOs, with more than a decade of experience, had capabilities amongst their staff and demonstrated ability to work through intermediaries to influence policy.

Some Youth & Child Rights CSOs indicated that by virtue of their size and age, they found it difficult to insert into policy making processes especially national level ones. Den of Hope, New Breed Generation, and Youth Advancement Initiative for example, indicated that cost implications of attending forums and policy making meetings was substantive yet their resource endowments were meager.

There was also a strong perception across most of the Youth & Child Rights CSOs that with increasing shrinkage of resources available to CSOs, and a tendency towards project funding rather than core funding, it was increasingly difficult to attract high caliber employees and to develop their capacity for engagement in policy making. There were thus substantive capacity gaps for many Youth & Child Rights CSOs that impinged on their ability to effectively insert themselves into policy making processes and make meaningful contribution. Some of such capacity challenges included: understanding the conduct of the policy cycle, roles of civil society in policy making and effective policy engagement mechanisms and strategies.

Many Youth & Child Rights CSOs operate on 'starvation wages' given that most donors no longer give core funding. This creates a challenge in the institutional capacity of Youth & Child Rights CSOs. - *KII-CSO respondent, Monday 13 December 2016*

However, there was evidence that some Development Partners were providing direct technical assistance for CSOs including Youth & Child Rights CSOs and government departments (both at county and national levels) and also providing resources for them to develop the capacity of their staffs in project implementation that also included aspects useful in organizing for policy influencing. There were also

reports of CSOs engaged primarily in capacity development for other CSOs in areas crucial for policy influencing like access, interrogation and use of information, advocacy, and knowledge brokering. Such Organisations as Development Initiatives and Civicus indicated that they had been involved in some activities for developing the capacities of CSOs including Youth & Child Rights CSOs to access and use information to affect policy. These were understood to be significant steps that were improving the skills and capabilities of program officers in many Youth & Child Rights CSOs and also providing organizational capabilities for leading and organizing for policy engagement and influencing. Nonetheless, across the board, respondents argued that resource challenges remained the greatest limitation to improving capacity of Youth & Child Rights CSOs to influence policy.

2.2.2 Access to Information

As a critical component for enabling the operations for CSOs, the GPEDC insists that governments put into practice principles and laws governing the full transparency and accountability for government priorities, strategies, plans and actions. As such, access to information held by government by Youth & Child Rights CSOs becomes pivotal. We investigated whether CSOs in Kenya, including Youth & Child Rights CSOs, had the right to access relevant government information, by law and in practice.

Guarantees for access to information: There was an elaborate framework of legislation and policies that provided substantive guarantees for Youth & Child Rights CSOs to anchor their demands for access to information held by government.

The right to access to information is internationally affirmed under the Universal Declaration of Human Rights (UDHR) and further under the International Covenant on Civil and Political Rights (ICCPR). These treaties and conventions have been ratified by Kenya. Therefore, they formed part of the Kenyan law by virtue of Article 2(6) of the Constitution and as such provided further guarantees for the right to access to information in Kenya, including for Youth & Child Rights CSOs. The right of access to information is also provided for in several international and regional legal instruments to which Kenya is subject by way of ratification. Article 35 of the Constitution of Kenya 2010 guarantees the right to access to information. Section 96 of the County Government Act 2012 provides for the right to access of information and Access to Information Act 2016 provides a framework for actualizing the right as enshrined in Article 35.

Figure 4: Provisions of Article 35 & Access to Information Act 2016

<u>Access to Information Act 2016</u>	<u>Constitution of Kenya</u>
<p>PART II — RIGHT TO INFORMATION</p> <p>4. Right to information</p> <p>(1) Subject to this Act and any other written law, every citizen has the right of access to information held by— (a) the State; and (b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.</p> <p>(2) Subject to this Act, every citizen's right to access information is not affected by— (a) any reason the person gives for seeking access; or (b) the public entity's belief as to what are the person's reasons for seeking access.</p> <p>(3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.</p>	<p>35. Access to information</p> <p>1) Every citizen has the right of access to - (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.</p> <p>(2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.</p> <p>(3) The State shall publish and publicise any important information affecting the nation.</p>

Whilst this composite of laws provided a framework through which guarantees for access to information including for policy making and accountability for policy processes could be anchored, there were reservations about how much the law could achieve. Respondents argued that enactment of law and actualisation of the ideals for which such laws are enacted were almost mutually exclusive in Kenya. There was no guarantee that the law would sort out many of the challenges regarding access to information. Moreover, there were problems with dissemination of information about new laws to lower cadres of government meant to execute them that continued to limit access despite existing legal and institutional frameworks. In fact a report by the GPEDC²¹ noted that in most of the countries across the globe where a law existed that governs access to information; there were serious issues around access to the right information.

A law is necessary but not sufficient. There is need for political will to execute the law to change things. - *KII-DP respondent, Wednesday 9 November 2016*

The enactment of the Access to Informational will not necessarily lead to improved access to information for CSOs. – *FGD-Media, Monday 13 December 2016*

In practice, the Government of Kenya had made significant attempts at increasing access to public information through multiple platforms and regulations in government departments especially by leveraging ICTs and new media. These included the operationalisation of the Kenya Open Data Initiative (KODI), the Open Government Partnership (OGP) and actualization of some of the ideals of open budgeting.²² Also such actions as Ministries, Departments and Agencies (MDAs) of government

²¹CSO Partnership for Development Effectiveness 'GPEDC Indicator Two - Civil Society Operates within an environment that maximizes its engagement in and contribution to development: An Assessment of Evidence' (2016) CPDE Working Group on CSO Enabling Environment & CPDE Working Group on CSO Development Effectiveness [Online] available at: www.csopartnership.org/wp-content/uploads/2016/07/GPEDC-Indicator-Two.pdf

²² The Open Budget Index 2015 rated Kenya at position 48 out of 88 countries considered in the survey reflecting some level of openness of budgets despite lurking insufficiency in openness of budget information OBI. The budget process offers CSOs two broad opportunities to influence policies and priorities to be included in the national budget. www.internationalbudget.org/wp-content/uploads/OBS2015-Report-English.pdf

increasingly publishing information on their websites demonstrated positive steps towards increasing access to information.

Cumbersome processes for accessing public information: Despite the legal guarantees and policy initiatives by the Government of Kenya, public information in the custody of government remained substantively cumbersome for Youth & Child Rights CSOs to acquire. Access to information was reportedly denied on the basis of various reasons that included: fear of exposure of government activities especially those related to integrity, national security considerations, bad attitudes of government officers, and legal and regulatory loopholes which were exploited by public officers.

Channels for provision of public sector information remained tedious with a lot of lengthy procedures that involved writing of requisition letters and multiple follow-ups with government officers who most often were not motivated to avail data or are cultured to hoard it. There also remained significant reservations about the quality of information. Some Youth & Child Rights CSOs involved in the budget making process for example complained about the lack of timely budget data provided mentioning that finding most current budget information was very difficult. Others also complained about the largely analog formats or platforms preferred by government to avail information despite them being expensive and taxing to use. In fact one Youth CSO that preferred to remain anonymous quipped that when they asked why some government department preferred to provide budget data in hard copy booklets sold at the government printers, instead of soft copy spreadsheets or in Pdf formats, they were advised that the sale of the budget booklets provided a revenue stream for government.

Moreover, it was observed that access to public information remained ad hoc, through largely personalized relations, with government officers, that were not open to all Youth & Child Rights CSOs. Also, there were categories of information, like those perceived as meant to keep government to account that were actively restricted or more difficult to access. This was apparently even more difficult for organizations that were perceived as anti-government.

There were indications nonetheless, that avenues for recourse were available to Youth & Child Rights CSOs, especially through the judiciary, whenever access to information was denied. However, many respondents, like TISA, Civicus and NTA maintained that even litigations had frustrations and involved huge expenses that were largely prohibitive for a vast majority of Youth & Child Rights CSOs.

Whilst a new law has been enacted on Access to Information, a lot of its value will depend on political will to implement it and citizens testing its guarantees and enforceability. - *KII-DP respondent, Friday 18 November 2016*

2.3 Area Three: Donor – CSO Relationships

In many countries, donor policies and financing requirements affect the role of CSOs as effective, independent development actors in profound ways. As such, the Busan Partnership committed donors to establish transparent and consistent policies that define the place and roles of CSOs in donor strategic frameworks and plans, including country-level program implementation plans.²³ It also sought to push

²³OECD 'Busan Partnership for Effective Development Co-Operation' Fourth High Level Forum on Aid Effectiveness, Busan, Republic Of Korea, 29 November-1 December 2011 [Online] available at: <http://www.oecd.org/development/effectiveness/49650173.pdf>

donors to ensure that their financing modalities enable CSOs to implement their own mandates and priorities and be relevant to a diversity of CSOs, respecting their different roles, capacities, constituencies and approaches. We investigated the extent to which donors, funding mechanisms were responsive to the programmatic priorities of Youth & Child Rights CSOs, reliable and transparent. The findings were as follows.

2.3.1 Responsiveness of funding mechanisms for Youth & Child Rights CSOs

Notably, there remained a challenge in ensuring responsiveness of funding mechanisms, favored by donors, to priorities of Youth & Child Rights CSOs in Kenya. There was a general impression that most often, Youth & Child Rights organizations, like other CSOs largely aligned with funding mechanisms and donor priorities rather than substantively affecting or significantly contributing to the design or content of donor priorities.

Many CSOs bend backwards to align with donor interests, practices mainly because of resource limitations and need to survive. This has impacted their strategic direction in profound ways and affected their depth in whatever they are known to do. - *KII-CSO respondent, Thursday 17 November 2016*

Donors however maintained that they conducted elaborate consultations through commissioned research work, needs assessments and feedback loops from grantees and advisories from government institutions that ensured that their funding mechanisms were responsive to priorities of Kenyans including Youth & Child Rights CSOs. Some Donors argued, for example, that through engagements during the design, implementation and evaluation of programs, they allowed multiple opportunities for Youth & Child Rights CSOs to engage and provide insight into the workings of their development cooperation in Kenya. Others argued that they worked extensively through institutions of the government of Kenya which provided significant knowledge that informed development cooperation and as such they were comfortable with the responsiveness of their funding mechanisms.

Some donors also indicated that they achieved transparency and responsiveness through intermediary grant making CSOs that they tasked to gather perspectives of grantee Youth & Child Rights CSOs that then informed their funding mechanisms.

We feel that the consultative process for the development of the national strategy was sufficient. As much as funding mechanisms need to be responsive to priorities of CSOs, we do not only consult CSOs in development of strategies and decisions on priorities – we consult the government of Kenya and also consider aspirations of our tax payers who contribute the funding. - *KII-DP respondent, Thursday 17 November 2016*

Nonetheless, many Youth & Child Rights CSOs involved in the study remained emphatic that there was very limited space for meaningfully informing or affecting donors' national strategies and funding mechanisms. As such it was difficult to make them more responsive to their priorities and more transparent and reliable. Some Youth & Child Rights CSOs for example argued that it was extremely difficult to get donors interested in areas outside the frameworks of issues set out in their country strategies. They argued that donors come with 'pet-subjects' and operate on 'buzzes' from the global aid infrastructure that condition what they decide to focus on nationally. Such buzzes were sometimes not as realistic and in line with the priorities and aspirations of Youth & Child Rights CSOs in-country. Some respondents, especially youth NGOs and CBOs argued that they were too small to find space where donors

discuss national strategies or funding mechanism. They maintained that even where resources were earmarked for them, because of lack of sufficient capacity to handle money, they were supported through larger CSOs or through government which most often were the ones that engaged donors. In fact many Youth CSOs maintained that they were largely excluded from these processes and as such were just recipients of already set mechanisms.

Moreover a lot of donor relations, especially bilateral development cooperation apparently involved dyadic conversations between government and donors that excluded Youth & Child Rights CSOs in profound ways. Most of such relations were based on the assumption that government represents the interests of the country and consults widely including with Youth & Child Rights CSOs. For example, donors argued that their strategies and funding mechanisms were based on or aligned with the Medium Term Plans (MTP I and II) and Vision 2030. This approach was contested by many Youth & Child Rights CSOs arguing that increasingly, with limited space for government dialogue with Civil Society, government priority was not necessarily citizen priority.

Donors merely inform CSOs of shifts in their strategies or funding mechanisms. CSOs are just required to respond via RFPs at which stage very little can be done in terms of engagement to adjust focus, priorities or methodologies. - *KII-CSO respondent, Thursday 11 November 2016*

It is unlikely that CSOs contribute much to the meat of donor strategies for the country; they do not necessarily challenge positions or suggest alternative ideas. Thus the conversation between donors and CSOs becomes “cosmetic” - *KII-Academia respondent, 4 Friday November 2016*

In sum, relations between donors and Youth & Child Rights CSOs remained lopsided with substantive power still in the hands of donors. This meant that accountability and openness between donors and Youth & Child Rights CSOs was still largely inadequate. Some of this was attributed to historical precedence that had not changed much regardless of commitments both from government and donors on the Global Partnership for Effective Development Cooperation (GPEDC) and other development effectiveness milestones. Nonetheless, there were indications that Youth & Child Rights CSOs were beginning to develop some muscle in terms of how to engage and influence donor policies.

2.3.2 Inclusiveness of donor-CSO engagement

We sought to establish the extent to which donors were creating inclusive processes for Youth & Child Rights CSOs to engage on the development of their strategies. There was evidence that multiple platforms which Youth & Child Rights CSOs could exploit to engage donors had been created.. Such engagement forums included: Donor round tables, Development Partner Forums, and Sector Working Groups. Such meetings were organized on monthly, quarterly and annual intervals. There were also bilateral engagements between government and donors where most of the serious discussions regarding development cooperation like funding mechanisms and priorities were discussed.

However, most of the Youth & Child Rights CSOs consulted in the study felt that they were excluded from these forums. Some donors however argued that in the country’s laws there was no provision for involvement of Youth & Child Rights CSOs especially in bilateral donor-government meetings. This explained the apparent exclusion from such high level donor meetings as the Donor round tables and Development Partner Forums.

Notably, some Youth & Child Rights CSOs reportedly made effort to build personalised relationships with donors that opened up and allowed for more accountability and responsiveness. These however was in

selected cases and not necessarily institutionalised. They were also only applicable and practical for established Youth & Child Rights CSOs with the capacity and economic muscle to pursue donors on their own. Those that succeeded noted though that regardless of their character and power relations, such meetings appeared to provide suitable spaces that could be leveraged and exploited for meaningful engagement between Youth & Child Rights CSOs and Donors.

They depend on what is commonly referred to as 'friendraising' in CSO quarters. This implies cultivation of personalized relations between heads of donor country offices or key programs and heads of CSOs. Through such relations, CSOs communicate their work and interest donors and negotiate terms for funding. - *KII-CSO respondent, Thursday 17 November 2016*

There was also an impression, that there existed a hierarchy of Youth & Child Rights CSOs in the conduct of their relations with donors. This apparently allowed some elitism amongst Youth & Child Rights CSOs that excluded many others in engagements with donors. There were some 'privileged' Youth & Child Rights CSOs that were preferred by donors or who usually found themselves in most of donor consultations. Such CSOs had an advantage in terms of contribution to donor strategies and funding mechanisms. However, there was a feeling that they did not necessarily reflect the broad spectrum of priorities and needs of the majority Youth & Child Rights CSOs in whatever sector they were working. Youth & Child Rights CSOs at sub-national levels especially those operating at county levels indicated that they found it more difficult to engage.

If you have brand visibility and legitimacy in the face of donors you get invited to such donor-CSO meetings more often, and your opinion is invited, not necessarily taken into account. - *KII-CSO respondent, Tuesday 8 November 2016*

Some donors however defended the tendency to work with some selected CSOs arguing that most often their engagements were influenced by the principle of path dependency - working with CSOs that had demonstrated ability and willingness to effectively engage in the past. On their part, many of the Youth & Child Rights CSOs like SANA, NAYA, Ogra Foundation, Pamoja Trust and KEFEADO operating at county levels in Kisumu argued that this problem could be addressed through operating as consortiums perhaps further differentiated by sector – like for those working on reproductive health issues, governance, entrepreneurship, art and so on.

Some Youth & Child Rights CSOs like Den of Hope, The New Image Youth Organisation and Vision Changers Kenya that indicated having worked in coalitions with other organizations argued that they were effective. They suggested that there could be forums, organized by donors, or by CSOs that bring together various Youth & Child Rights CSOs across the country or regionally to engage donors. They argued further that through such forums, they could have more access to donors, access information and even capacity development on effective ways of developing projects and pursuing various streams of funding.

2.3.3 Initiatives to diversify CSO income streams

We sought to explore the extent to which donors were facilitating Youth & Child Rights CSOs to diversify their resource sources and also any actions by government to promote more domestic resource mobilization to wean them off dependency on donors. Apparently, there was still an acute dependence on external resource streams for financing of CSO activities in Kenya. Over 90% of CSO resources were

reportedly from donors (governments and foreign private foundations) in foreign countries. This was argued to have put Youth & Child Rights CSOs at a very precarious situation especially considering the dwindling trends in ODA flows from traditional ODA channels – OECD countries. Nonetheless, there appeared to be very limited effort from Youth & Child Rights CSOs, donors and the government of Kenya invested in mobilizing local resources.

The most possible source of domestic resources for Youth & Child Rights CSOs was fundraising from the country's private sector. However, this was apparently stifled by uneasy relations between CSOs and private sector in general. Private sector remained skeptical about active partnerships with CSOs. It was argued that because of the problematic relations between government and CSOs especially those involved in advocacy and governance issues, it was difficult to find corporate entities willing to support them. This was attributed to the fact that private sector preferred cordial relations with government in order to thrive and as such shied away from linkages with organization that appeared to be at loggerheads with government.

Nonetheless, there were examples of corporate entities increasingly allowing resources to support the work of CSOs including Youth & Child Rights organization through their Corporate Social Initiatives especially through their foundations. These were observable in such sectors as education and health. Such foundations as the Safaricom Foundation and KCB were cited variously by many Youth & Child Rights CSOs involved in the study as key providers of domestic resources. However, the conduct of such assistance was deemed unsustainable, unstructured and disjointed to the extent that they were unreliable. Some foundations were however increasingly organizing their funding mechanisms and publishing them on their websites where Youth & Child Rights CSOs could access and submit project proposals for funding. Many respondents argued however that Youth & Child Rights CSOs needed to improve their relations with private sector and communicate the importance of their work a lot better in order to expand this stream of resources.

'Corporates' do not like anything that invites undue scrutiny. So funding CSOs that would ask government tough questions would be a hard sell. - *KII-Foundations respondent, Thursday 10 November 2016*

Domestic Resource Mobilisation only feasible when you are in service delivery. What corporate entity will want to support you when you are going to ask government the tough questions – and jeopardize their relations with government? - *KII-CSO respondent, Tuesday 8 November 2016*

Some notable suggestions for improving local resource mobilization for Youth & Child Rights CSOs included proposals to create a local civil society fund through which contributions from philanthropists, foundations and corporate entities could be pooled and then offered to Youth & Child Rights CSOs to compete for. There were also suggestions for review of the regulatory environment to allow Youth & Child Rights CSOs to engage more substantially in social enterprise and other economic ventures that could generate more resources that they can plough back into their activities. This was argued to require a lot more leaves and incentives from government in terms of tax breaks and facilitation that was still not forthcoming.

3.0 CONCLUSION AND RECOMMENDATIONS

3.1 Conclusion

This study was conducted at a crucial moment in the domestic politics of Kenya being just months away from the 2017 General Elections. A significant proportion of the outcomes of the study were thus arguably influenced in profound ways by political events around the election cycle – as in the conduct of government, the operations of donors and in the demeanor of CSOs. The study aimed to investigate the status of the environment within which Youth & Child Rights CSOs were operating in Kenya. It endeavored to illuminate areas where progress had been made, both in terms of legal guarantees and in practice regarding realization and protection of rights and freedoms of Youth & Child Rights CSOs. It was notable that in many areas, there remained strong guarantees, supported by the Constitution of Kenya 2010 and subordinate legislation, for an elaborate spectrum of rights and freedoms that qualified a favorable conclusion to a large extent of the environment for Youth & Child Rights CSOs in Kenya. However, and more importantly, this study established a trend towards steady shrinkage of the civic space in Kenya that appeared to portend a difficult environment for Youth & Child Rights CSOs in the future. There was a notable trend towards undue tighter scrutiny, exploitation of legal and regulatory loopholes, and application of political mechanisms, both implicit and overt, to frustrate the work of CSOs including Youth & Child Rights organisations. This spanned across all the three areas under investigation – i) the legal and regulatory environment, ii) policy influencing opportunities for Youth & Child Rights CSOs and iii) relations between donors and Youth & Child Rights CSOs.

3.2 Recommendations

Main Challenges facing Youth & Child Rights CSOs	Recommendations	Suitable Approaches
Recognition of rights and freedoms affecting Youth & Child Rights CSOs		
<ol style="list-style-type: none"> 1. Increasing limitation of freedoms and rights of CSOs through litigation, invocation of national security, political intimidation and unfavourable legislation 2. Significant government discretion over the rights and freedoms of Youth & Child Rights CSOs 	<ol style="list-style-type: none"> 1. Youth & Child Rights CSOs to continue advocacy and activism for commencement and enforcement of the PBO Act that portends a more favourable environment for CSOs 	<ul style="list-style-type: none"> – Lobbying – Advocacy and activism for commencement and enforcement of law
<ol style="list-style-type: none"> 3. Some Youth & Child Rights CSOs flouting policy, regulations and the law in the conduct of their operations that invite punitive responses from government 	<ol style="list-style-type: none"> 2. Youth & Child Rights CSOs to pursue an effective framework for self-regulation to improve compliance with legal and regulatory procedures and to improve their accountability; 3. On an individual basis, Youth & Child Rights CSOs to increase efforts to comply with regulations and laws governing their operations 	<ul style="list-style-type: none"> – Synergies amongst CSOs – Individual organizational effort
<ol style="list-style-type: none"> 4. Government perception of civil society including Youth & Child Rights CSOs as overly against it and not interested in constructive criticism 	<ol style="list-style-type: none"> 4. Youth & Child Rights CSOs to improve communication of their work to the public and government to attract support for their advocacy work and change unfounded negative perceptions 5. Youth & Child Rights CSOs to pursue more dialogue and lobbying besides combative activism in engaging government 	<ul style="list-style-type: none"> – Strategic communication – Dialogue – Lobbying
Formation and registration of Youth & Child Rights CSOs		
<ol style="list-style-type: none"> 5. Existing law for registration – NGOs Act 1990 limiting considering proliferation of CSOs, issues and approaches 6. Registration process slow, cumbersome and with a lot of power by NGOs coordination board sometimes used to frustrate some CSOs 7. CSO registration involves more compliance requirements compared to private sector 	<ol style="list-style-type: none"> 6. Government of Kenya to enforce and facilitate implementation of PBO Act 2013 which portends a better framework for registration 7. CSOs to continue further activism for commencement of the PBO Act 	<ul style="list-style-type: none"> – Lobbying – Advocacy and activism for commencement and enforcement of PBO Act

8. The expenses associated with the registration process costly for many upcoming Youth & Child Rights CSOs	8. CSOs to lobby government to rationalise fees associated with registration, filling returns and account opening especially for emerging Youth & Child Rights CSOs	
Freedom of Youth & Child Rights CSOs to operate without interference		
9. Apparent dichotomy of CSOs leading to a more favourable environment for CSOs involved in service delivery than those engaged in governance and advocacy work	9. Youth & Child Rights CSOs to pursue an effective framework for self-regulation to improve compliance with legal and regulatory procedures and to improve their accountability;	Coalition building
10. Restrictions by NGOs board on focus areas (counties) limits room for expansion and flexibility in programming for some Youth & Child Rights CSOs	10. Youth & Child Rights CSOs to lobby NGOs coordination board to consider more flexibility in authorization of geographical coverage of CSOs	– Lobbying – Advocacy and activism for commencement and enforcement of PBO Act
11. Administrative burdens on Youth & Child Rights CSOs including for fees for filling of returns and account opening	11. CSOs to lobby government to rationalise fees associated with registration, filling returns and account opening especially for emerging Youth & Child Rights CSOs	
Freedom of Youth & Child Rights CSOs to express their views and engage in advocacy		
12. Youth & Child Rights CSOs resort to self-censorship or to 'smoothing' their opinions especially on governance issues to avoid victimization due to perceived repercussions	12. Youth & Child Rights CSOs to pursue alternative engagement mechanisms beside activism like board room lobbying to promote their agenda.	– Lobbying
Access to resources for Youth & Child Rights CSOs		
13. There are laws and amendments to existing or proposed legislation that would severely limit access to resources for CSOs.	13. Youth & Child Rights CSOs to continue advocacy for commencement of the PBO Act 2013 without amendments	– Advocacy – Lobbying
14. Diminishing ODA disbursements and preference by donors to channel more resources through government is shrinking proportion of resources for Youth & Child Rights CSOs	14. Donors to consider balancing disbursements of development assistance between government and CSOs to meet the ideals of GPEDC of increasing effective partnerships with recipients (government) whilst still allowing substantive resources for CSOs	
15. Misapplication of aid by government and some CSOs including some Youth & Child Rights CSOs discouraging further partnerships.	15. CSOs to increase accountability – to government, donors and to citizens for resources disbursed	– Organizational level effort

16. Channeling resources through government limiting funding for Youth & Child Rights CSOs	16. Youth & Child Rights CSOs lobby for creation of a local civil society fund through which contributions from philanthropists, foundations and corporate entities could be pooled and then offered to Youth & Child Rights CSOs to compete for.	– Advocacy – Lobbying
17. Little if no legal and policy incentives for promoting local resource mobilization for Youth & Child Rights CSOs	<p>18. Youth & Child Rights CSOs to improve communication of their work to the public and to government to attract support for their advocacy work and domestic resource mobilization.</p> <p>19. At individual level Youth & Child Rights CSOs to improve relations with private sector - local corporate entities and philanthropists with potential to support local resource mobilization for CSOs.</p> <p>20. Donors to increase resources and technical assistance for CSOs to diversify resource streams</p>	– Strategic communication – Dialogue – Lobbying
Spaces for Youth & Child Rights CSOs for dialogue and policy influencing		
18. Some platforms for policy engagement are not institutionalized hence ad hoc and unreliable	21. Government of Kenya to institutionalize existing opportunities for engagement with CSOs like the Sector Working Group forums to ensure contributions of CSOs are protected by regulation or by law.	– Advocacy – Lobbying
19. Power and discretion retained by government on selection of participants impinge on ability of Youth & Child Rights CSOs to effectively influence policy	22. Youth & Child Rights CSOs to work through large consortiums with more CSOs to increase their voice and potency of their policy messages.	– Coalition building – Advocacy – Lobbying
20. Small size and weak organizational status of some Youth & Child Rights CSOs limiting their ability to participate in policy processes	23. Youth & Child Rights CSOs to lobby government to make regulations that stipulate quorum requirements for policy making forums that include CSOs.	
21. Modalities for engagement in policy processes often inconvenient like invitations that are too prompt and lack of sufficient information prior to engagements	24. Youth & Child Rights CSOs to use new legislation like Access to Information Act or Public Participation regulations to advocate for better modalities for engagement in policy processes.	– Litigation – Advocacy

22. Insufficient capacity amongst Youth & Child Rights CSOs especially on dynamics of the policy process limit their ability to influence policy	25. Donors to adjust funding mechanisms to allow more resources and technical assistance for capacity development for CSOs on policy influencing.	– Donor-CSO funding negotiations
23. Resource limitations for Youth & Child Rights CSOs preventing them from identifying and engaging in policy processes especially at national levels		
Access to information		
24. Cumbersome processes for accessing public information	26. CSOs to continue activism for enforcement and implementation of the Access to Information Act 2016	– Litigation
25. Reservations about the quality of information especially related to timeliness		– Advocacy
26. Some platforms preferred by government for providing information like hardcopy booklets increase costs for information processing and time spent handling data	27. CSOs to test the merits and enforceability of new legislation like Access to Information Act 2016 by demanding services that such legislation guarantee.	
27. Access to information most possible through personalized relations that exclude a majority of Youth & Child Rights CSOs		
Relations between Donors and Youth & Child Rights CSOs		
28. Funding mechanisms not sufficiently responsive to priorities of Youth & Child Rights CSOs. CSOs largely align with funding mechanisms and donor priorities rather than substantively affecting them	28. Donors to do more local research in Kenya to ensure that their country strategies cater more for priorities and resource gaps identified by CSOs and Citizens 29. Donors to allow more evidence from CSOs to inform design of their funding mechanism and programmes	– Research
29. Limited space for meaningfully informing or affecting donors' national strategies and funding mechanisms	30. CSOs to increase synergies and cooperation amongst themselves and develop an effective umbrella framework for negotiating and engaging with donors and government;	– Coalition building
30. Due to size and organizational capacity some Youth & Child Rights CSOs unable to access and pursue donors and effectively engage		– Multi-stakeholder forums

<p>31. Lopsided relations between donors and Youth & Child Rights CSOs – donors have more power. Transparency and accountability in CSO-donor relations remains inadequate</p>	<p>31. Donors to open up donor forums like round tables and development partners’ Forums to engagement with CSOs including Youth & Child Rights CSOs</p>	
<p>32. Perceived elitism amongst CSOs that excludes some Youth & Child Rights CSOs engagements with donors.</p>	<p>32. CSOs and/or donors to convene forums bringing together various Youth & Child Rights CSOs across the country or regionally to engage donors.</p> <p>33. Youth & Child Rights CSOs to leverage such forums to pursue donors and as avenues for capacity development and</p>	

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Laws affecting operations of Youth & Child Rights CSOs in Kenya considered in the study

The Access to Information Act No. 31 of 2016

The Companies Act Cap. 486

The Constitution of Kenya

The Cooperative Societies Act Cap. 490

The NGO Coordination Act No. 19 of 1990

The NGO Coordination Regulations 1992 – Legal Notice No. 152 of 1992

The NGO Council Code of Conduct 1995 – Legal Notice No. 306 of 1995

The Public Benefits Act No. 18 of 2013

The Societies Act Cap. 108

The Statute Law (Miscellaneous Amendments) Bill 2014

APPENDIX

Enabling Environment for Youth & Child Rights CSOs 2016, Kenya Case Study: - Interview Questions

Area One: Universally accepted human rights and freedoms affecting Youth & Child Rights CSOs

Recognition of rights and freedoms affecting Youth & Child Rights CSOs

- Is the right to freedom of association protected in the constitution and basic laws of Kenya?
- Is the right to freedom to peaceful assembly protected in the constitution and basic laws of Kenya?
- Is the right to freedom of expression protected in the constitution and basic laws of Kenya?
- Are there significant and/or severe restrictions on the exercise of one or more of these rights through government intimidation, intrusion, harassment or threats?

The legal and regulatory environment, implementing rights and freedoms affecting Youth & Child Rights CSOs

1. Entry: CSO formation and registration

- Is there an enabling law on CSO registration, and in practice are Youth & Child Rights CSOs able to easily register?
- Are the processes/regulations for formation and registration enabling for civil society organizations?
- How best can the government of Kenya work to create an enabling environment for engagement with Youth & Child Rights CSOs in the development effectiveness agenda?

2. CSO Operations: Free from interference

- Can Youth & Child Rights CSOs, at the time of and after registration, freely choose where, with whom and with what mandate to work?
- Are Youth & Child Rights CSOs free to operate, in law and in practice, without excessive administrative burdens and/or government interference?
- Is there interference in CSO operations on the part of the state and other actors for political or arbitrary reasons? Is there legal recourse against such harassment?

3. CSO expression of views and advocacy

- Are there legal or political barriers that hinder a CSO's ability to openly express its opinions, particularly on matters critical of government policies and to engage in public policy activity and/or advocacy? (Barriers include self-censorship)

4. Access to resources

- Are there legal, policy or political barriers to access resources, including foreign resources, for Youth & Child Rights CSOs?
- Are there legal or policy incentives to promote local resource mobilization and financial sustainability among Youth & Child Rights CSOs?

5. Rights to assemble peacefully

- Are there legal or political barriers to the right to peaceful assembly? Can groups who gather openly criticize the government through peaceful protests or other forms of demonstrations?
- Are there restrictions to assemble and make claims on government, including government use of harassment, arbitrary arrest or use of excessive force?

Area Two: Policy influencing

1. Spaces for dialogue and policy influencing

- Are there inclusive institutionalized opportunities for Youth & Child Rights CSOs to participate in policy and decision-making processes? Is their input taken into account in the policy outcomes?
- Do these processes include marginalized groups? (also Children rights and Youth organizations) and are such processes available for all kinds of policies? Are they involved in design, implementation and monitoring of national development plans and policies? Is their input taken into account in the policy outcomes?
- Are there accessible accountability mechanisms for feedback and policy assessment, ensuring that governments consider policy suggestions and input from Youth & Child Rights CSOs?
- Are there initiatives to address capacity needs of government officers and Youth & Child Rights CSOs to participate in policy dialogue?
- How can Children rights and Youth organizations establish formal working relations and ensure active participation with key Development Partners (Donors, Government and Development Agencies)?

2. Access to information

- Do Youth & Child Rights CSOs, have a right to access to relevant government information, by law and in practice?
- Is the process of obtaining relevant government information simple, timely, transparent and based on established procedures?

Area Three: Donor – CSO relationships

- Are CSO funding mechanisms responsive to the programmatic priorities of Youth & Child Rights CSOs in Kenya?
- Are CSO funding mechanisms reliable, transparent, easy to understand, and disbursed impartially?
- Are there initiatives by donors for facilitating diversification of Youth & Child Rights CSOs' income sources?
- Are donors creating inclusive processes for CSO policy engagement on donor strategies at all levels?
- How best can donors facilitate dialogue and frequent interaction with Youth & Child Rights CSOs on the issues around enabling environment agenda?

