



## **THE CONSTITUTIONAL REVIEW PROCESS TOUR REPORT**

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**THE TOUR WAS ORGANISED TO VISIT KENYAN CSOs INVOLVED IN ADVOCACY  
DURING THE WRITTEN OF KENYAN CONSTITUTION**

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## 1. Introduction

From February 18<sup>th</sup> to 21<sup>st</sup> some staff of PINGO's Forum traveled to Kenya. The aim of the trip was to learn the experience Civil Society Organizations in Kenya in the struggle for advocacy of Kenya Constitution Review Process. Kenya CSOs played a big role in the written Constitution and acted as the mouth piece of the poor citizens in ensuring the controversial issues are answered through the Constitution. We have learned so far that, no single organization can do advocacy without forming a team with other organizations. This had led Kenya CSOs to form coalitions at different levels including the national Coalition which was led by Kenya Land Alliance and Pastoral Coalition which was led by Pastoralist Development Network of Kenya. These national CSOs also gained support from International organizations and embassies through sponsoring different initiatives and civic education which was however the big role of many organization on the ground level.

PINGO's Forum wanted to know the experience and see how Kenya CSOs had managed in the long run until the completion of the Constitution with a lot of success and challenges.

With this study, the delegation learned a lot, the knowledge in which when transformed into our struggle for good and new constitution, it will have positive outcomes.

This trip report includes key essential areas which were core areas of the tour; aim of the tour, list of organization visited and brief explanation about them, key issues of their advocacy, method they had applied, their experience, success, challenges and lesson learnt.

## 2. Reason of conducting the Constitutional Review Process (CRP) Study Tour

The Constitution tour to Kenya had the following purposes;

- Learning strategic, approaches, and Methods Kenya CSOs had use in their constitutional Review Process as if they will also assist in our struggle for good and new Constitution.
- Learn about the engagement of the Indigenous Peoples in the Constitutional Review Process.
- As Kenya and Tanzania Pastoralist share alike challenges, the team wanted to know what were key issues of their concern and whether they have been included into the Constitution.
- Learn about how much their struggle for long time had bare fruits for writing their new Constitution (does the Constitution of Kenya answers the challenges facing pastoralist men, women and youth, marginalized and minority groups and hunter-gatherers).

## 3. Profile of organization visited

The team had managed to visit the following organization as shown on the profile table;

S/N	NAME OF ORGANISATION	BRIEF PROFILE	OFFICE
1.	Pastoralist Development Network of Kenya (PDNK)	Was Launched in 2003 to advocate for the Rights and fundamental freedom of pastoralists in Kenya. It is a network comprising pastoralist individuals, NGOS and CBO and	NAIROBI

		Non-pastoralist Organizations and agencies supporting pastoralist development in Kenya.	
2.	CEMIRE	CEMIRIDE is an advocacy organization devoted to strengthening the capacities of minority and indigenous communities in Kenya and East Africa to secure the respect, promotion and protection of their rights.	NAIROBI
3.	Resource Conflict Institute (RECONCILE)	RECONCILE established in 1999 and registered in Kenya as a Regional NGO in May 2001. It is the NGO that deal with conducting research, advocacy and public interest environmental education and litigation to promote policies, laws and practices which empower citizens to participate in environmental and natural resources governance.	NAKURU
4.	Kenya Land Alliance (KLA)	KLA is committed to effective advocacy for the reform of policies and laws governing land in Kenya. KLA was founded in 1999 and registered as a Trust in 2001. The initiative to create an institutional framework for land laws and policy advocacy in Kenya was necessitated by the realization that the policy, legal and institutional framework created in 1950s had become inadequate due to many changes in the social, political, economic and cultural fronts that had occurred in the country over the years.	NAKURU
5.	Ogiek Peoples' Development Program (OPDP)	OPDP is dedicated to the Ogiek culture, the protection of nature and the improvement of socio-economic opportunities by way of building the synergies of the Ogiek youth and women through education. Its pioneer project area covers all Ogiek inhabited areas. Above all, the OPDP is committed to the eradication of	NAKURU

		poverty amongst the Ogiek peoples.	
6.	Endorois Community Welfare Council (EWC)	Formed in 1995 as the result of government intimidation, arrest, tortured and persecution following their denial to vacate the land the government willing to take and evict the indigenous Endorois people. The council was established to defend and struggle for the right of minority and indigenous Endorois to demand for their land rights. This had led them to open a case in the African Court on Human and Peoples' Rights in Gambia, the case in which they won. Now they are struggling for the implementation of the ruling.	NAKURU
7.	Mainyoito Pastoralist Integrated Development Organization (MPIDO)	Regional/ County level- emerged as the result of marginalization and dehumanization of Maasai pastoralist in Kenya. It aims to envision a just and equitable society that recognize and upholds human rights and the fundamental freedom of indigenous peoples'.	NAIROBI
8.	League of Pastoralist Women of Kenya (LPWK)	Regional/County level for improving governance in Kenya by building pastoralist women's leadership capacity and fostering participation in abroad sense in political engagement.	NAIROBI

#### 4. Issues entailed by Kenya CSOs on their Memorandum during the CRP advocacy

These organizations set a common agenda on issue of the Constitution; working together to ensure that human rights are promoted and protected by the new Constitution of Kenya. Issues of land, women rights, youth rights, disables, minority and marginalized communities rights are issues which were commonly advocated for, though there are some issues which were more or less serious in some organizations. For example, MPIDO and PDNK were more serious in issues pertaining to pastoralists specifically while LPWK were more serious in issue of women considerably pastoralist's women and Kenya Land Alliance was more based on land rights as the core area of expertise.

The following issues were commonly addressed and advocated.

- i. **Recognition;** State how do you wish to be identified, marginalized, minority, IP.
- ii. **Land;** Propose categories of land by considering the livelihoods of people, community land.

- iii. **Culture**; How to benefit from culture in case it is used for business and tourism.
- iv. **Affirmative action**; Special attention to marginalized communities.
- v. **Representation**; Marginalized groups of pastoralists and hunter-gatherers have representation rights in parliament and in all government decision making bodies.
- vi. **Equalization fund**; Propose on what percentage should go to marginalized communities.

## 5. Strategies and methodologies applied in advocacy

In the process of writing Kenyan Constitution, CSOs used different advocacies strategies and methodologies that ensured that their agenda is strongly pushed and incorporated into the constitution. The following are major approaches and methods they used, that when used in our context it will help to push the pastoralist agenda of pastoralist and hunter-gatherers human Rights.

- Use **Demanding Language** in Advocacy.
- **Strong civic education** through publication written in simple language that each citizen can read and understand, [fliers], radio airings, TV programs, meetings and debates.
- **Full utilization of media advocacy**; conduct number of press release, and cooperate with media. Through social responsibility the media houses have, they can provides sessions, prepare media brief. This can however be effective if you plan to meet editors from many houses by organizing break fasts meetings, or luncheons, or dinners.
- **Prepare Memorandums** drawn from the collection of people opinions as CSOs which will set clearly your agenda and issues that you wanted to be incorporated into the Constitution.
- **Forming networks, alliances and forums** of different stakeholders.
- **Mapping the alliances of Commissioners and surrender credit to them**; This will motivate them to see the work they are doing is good and they will be respected.
- **When zero draft is ready, look at the expectation if they had been included in the constitution**; fundamental human rights in the Bill of Rights and make a Benchmark;
  - See what were key issues you wanted to appear in the Constitution.
  - Look at your interest if they appeared in the Constitution.
  - See what you need to appear in the constitution.
- **Be clear on what do want to appear in the constitution**;
- **Make the analysis of issues by build consensus within the alliance on what are Key Issues**
  - You can compromise with.
  - [Those not] to compromise.
  - Issues you don't give attention.
  - Sensitive issues to you- that might antagonize others.
- **Know how to engage into the process**
  - Time lines.
  - When to conduct civic education.
- **Use the media.**
- **Monitor the process closely.**
- **Listen to agenda of other alliances** for example farmers in case of pastoralists.
- **Do not limit the advocacy**, include all, national and international organizations, organize meetings with sponsors, use students forums, churches, youths, women and others.
- **Build alliance with Members of Parliament e.g. Pastoralist Parliamentary Group (PPG)**

- **Use Good lawyers to help interpret** sections and articles of the draft.
  - **Use the Court to engage** if you want to stop the process.
- 6. Kenya CSOs experience on the Constitutional Review Process in Kenya**

The experience shows, the struggle for good constitution is not easy as such. In Kenya for example, it has taken 20 years of struggle to arrive at the current good Constitution. In the part of pastoralists, the experience shows that, the important thing in the advocacy and struggle for a good Constitution is the unity and getting clear issues to push. However, involvement of other non-pastoralist alliances in pastoralist agenda is very important and essential for pushing the agenda forward. The following were issues experienced during the struggle of Kenya Constitution Review.

- **Use of the language** during the advocacy that show you are **demanding** your rights.
- **State the challenges links from those drawn from colonials.**
  - **Historical Injustices**; provides evidences, cases to claim rights, contract entered.
  - Use **Evidence Based Approach (EBA)** i.e. land alienated, bad policies.
  - **Impact of Colonia Education.**
  - Colonial impacts i.e. land alienation, oppression and etc.
- **Financial requirement**; the process of advocacy and struggle for the new Constitution has both **TIME CONSUMMING AND REQUID MONEY** that during the advocacy organizations had to raise sufficient funds to enable them to engage. So fund is a fundamental requirement that should be prioritized during the planning stages of advocacy.
- **Civic education**; Civic education is one of the fundamental tools in the advocacy for constitution review process. Full engagement and participation of communities on the ground in giving their authentic opinion, which will be equal to what is in the Memorandums.
- **Mapping alliances and Issues**; Mapping the alliances at different levels is very important for knowing who do you alliance with at a particular time and what issues to be advocated for. Issues must be categories in accordance to priorities;
  - Consolidated issues.
  - Common issues.
  - Issues not compromise.
  - Issues to compromise in case of.
  - Issues not of your interest but interest of others.
  - General issues supported by majority of people.
- **Use of the Court to engage** the process in case you want to stop the process for any reason.
- **Media is the essential tool of advocacy** at all levels, national media and community radio, for civic education and passing the issues to the general public.
- **Strong organization of pastoralist and hunter-gatherers** during the collection of opinion and in the zero draft Constitution. People must be kin to read every chapter, line by line to see whether the collected opinion from pastoralists and those of general are incorporated.

**7. Success realized in the constitutional Review process advocacy in Kenya**

There are several successes that have been achieved by the marginalized group in the written Constitution process. There are many provisions which were the need and want of the people; the marginalized group, minority, pastoralists and hunter-gatherers which had been incorporated in the Kenya Constitution. Due to this provisions, the pastoralists as well as the CSOs involved in the

advocacy had celebrated the success they had achieved by having many provision that are friendly to their livelihood and meet if not all but high percentage of their need. The following are the main issues incorporated into the Kenya Constitution which were the pastoralists demand and need.

**7.1. Recognition of marginalized and minority group** as well as pastoralists and hunter-gatherers (Indigenous Peoples) under Article 56 of the Kenya Constitution.

**7.2. Land and environment;** this had been captured as an independent chapter, and it is categorized into three main categories such as public land, private land and community land, under chapter 5 of the Kenya Constitution. The document also provides for community land under Article 63. The importance of this chapter is that, it recognized community land, unregistered land and however aim to correct historical injustice and protect the land of marginalized from any alienation whatsoever without their prior informed consent.

**7.3. Culture;** this is another issue of success, that the Constitution of Kenya has recognized the culture of all people in Kenya and put criteria in which it will ensure that the people are benefiting from their culture and protect from miss use and abuse, under Article 11(3).

**7.4. Affirmative Action;** the Constitution provides for the affirmative action, to provides special priority and attention to communities lacking behind in development.

**7.5. Representation;** The Kenya Constitution under Article 100 provides for promotion of marginalized groups by providing for nomination of representatives of marginalized groups such as women, disables, youths, ethnic and other minorities and marginalized communities.

**7.6. Equalization fund;** this are provided under **Article 204 of the Kenyan Constitution.** A percentage of revenue collected by the national government shall be used to provide social services to marginalized areas with the purpose leveling development differences.

## **8. The Challenges**

During the struggle for the rights of Marginalized group to be incorporated into the new constitution of Kenya, the CSOs had encountered the following challenges;

- Non availability of enough funds.
- Difficult language used in drafts of the Constitution.
- Political interests had confused people during the collection of opinions.
- The time was very short to marginalized groups.
- Difficulties to contact the Constitutional commission.
- Media biasness.
- Multi-memorandum; that each group had prepared its memorandum.
- Lack or delayed information to indigenous communities.
- Low capacity of many organizations.
- Corruption on the part of government that wanted to silence the movement of CSOs.
- Drafters were not engaging into the community.
- Worry of implementation.

## **9. Lesson learned**

During the tour, the team learned the following:



- ✓ The constitutional Review Process requires a lot of funds.
- ✓ The issues in the Memorandum must be same with issues proposed by the people.
- ✓ Formation of alliances is very important for consolidation of power of advocacy.
- ✓ Use of media is one of fundamental tools of reaching people and passing the agenda.
- ✓ Finding the alliance within the commission.
- ✓ Used of evidence based advocacy is the most essential strategy during the process.

## **10. Recommendation**

- Bringing in MPs parliamentary group (PPG) into the constitutional process.
- To identify constitutional Commissioners under individual capacity to work with.
- Harmonies our recommendation in single document to be circulated to constituents.
- Coordinate the appointment of people to form the district constitution councils.
- Shaping opinions by preparing effective fliers; T-shirts, booklets etc.
- Design program that will be aired in local radios, national radios and in different televisions.
- Invite the media editors and journalist in breakfast as well dinners and luncheons.
- The agenda must be the national issue that is known by the general public.
- Consult and gain support from the international organization and embassies.
- Making consultative meetings with different stakeholders on how the messages from the indigenous people gain attention in the written Constitution process.
- Mobilizing enough resources.