



5/15/2015

TASKFORCE REPORT ON THE PUBLIC  
BENEFIT ORGANIZATIONS ACT, 2013  
(PBOs ACT, 2013)



THE PBO TASKFORCE  
MINISTRY OF DEVOLUTION & PLANNING  
i

## TABLE OF CONTENTS

FOREWORD.....	v
ACKNOWLEDGEMENTS.....	vi
LIST OF ACRONYMS .....	vii
EXECUTIVE SUMMARY.....	viii
1.0 INTRODUCTION .....	1
1.2 THE TASKFORCE.....	2
1.2.1 Establishment of the taskforce.....	2
1.3 MEMBERSHIP .....	2
1.4 TERMS OF REFERENCE (TOR) .....	3
1.4.1 Interpretation of Terms of Reference .....	4
1.5 METHODOLOGY.....	4
1.5.1 Rules of the taskforce.....	4
1.5.2 Work plan .....	4
1.5.3 Weekly Meetings.....	4
1.5.4 Records .....	4
1.5.5 Collection of Public/stakeholder views .....	5
1.5.6 Public Hearings .....	5
1.6 Public participation during the forums .....	5
2.0 Public Hearings.....	7
2.1 Nyeri: Muranga, Kirinyaga, Kiambu and Nyandarua (Central) .....	8
2.2 Meru: Isiolo and Tharaka Nithi (Upper Eastern) .....	8
2.3 Mombasa: Taita Taveta, Kilifi, Kwale, Lamu and Tana River (Coast) .....	8
2.4 Garissa: Mandera, Wajir (North Eastern) .....	8
2.5 Kitui: Machakos, Makueni, Marsabit (Lower Eastern) .....	8
2.6 Nakuru: Kajiado, Samburu, Laikipia, Baringo, Bomet, Narok and Kericho (Lower Rift) .....	8
2.7 Kisumu: Siaya, Migori, Homa Bay, Kisii (Nyanza).....	8
2.8 Kakamega: Busia, Bungoma, Vihiga (Western) .....	8
2.10 Eldoret: Uasin Gishu, Nandi, Trans Nzoia, West Pokot, Turkana and Elgeyo Marakwet (North Rift) .....	8
2.11 Nairobi: Nairobi .....	8
2.3 Levels of Participation.....	8

2.3.1 Nyeri .....	8
2.3.2 Meru .....	9
2.3.3 Garissa.....	10
2.3.4 Kitui.....	11
2.3.5 Nakuru.....	13
2.3.6 Kisumu .....	14
2.3.7 Kakamega .....	15
2.3.8 Eldoret .....	17
2.3.9 Mombasa.....	18
2.3.10 (a) Nairobi .....	19
2.3.10 (b) Nairobi- MAA' Speakers.....	20
2.3.10 (c) Nairobi- Foundation and Trust .....	21
2.3.10 (d) Nairobi Development Partners .....	23
2.4 Thematic Meetings .....	24
2.4.1 Experts Meeting .....	24
2.4.2 Engagement with Legislature .....	24
3.0 PUBLIC PARTICIPATION.....	24
3.1 Public Participation .....	24
3.2 Public Awareness .....	25
3.3 Equity and inclusivity.....	26
3.4 Types of Public views for the forums.....	26
3.5 Information and Public Engagement .....	27
3.6 RESULTS OF PUBLIC VIEWS .....	28
3.6.1 Amendments .....	28
3.6.2 Registration of PBOs .....	30
3.6.3 Regulation of PBOs.....	31
3.6.4 Accountability of PBOs .....	32
3.6.5 National Security.....	33
3.6.6 Enabling Environment of PBOs.....	34
3.6.7 Transition.....	35
3.6.8 Monitoring.....	36
3.6.9 Capacity Building .....	36

3.6.10 Self-Regulation.....	36
3.6.11 Authority .....	36
3.6.12 Unique issues .....	37
4.0 RECOMMENDATIONS .....	37
APPENDICES .....	38

## FOREWORD

Over the years, charitable organizations including Non-Governmental Organizations (NGOs) have made major contributions to Kenya's development. Charities have and continue to complement Government development efforts in areas of relief, water, education, agriculture, environmental conservation, culture and arts, sports, relief of poverty and promotion of human rights among others.

The sector is active in virtually every sphere of our economy and targets the general population and particularly the poor, the disadvantaged and the vulnerable. They are, therefore, the de facto connectors to all members of our society. This explains why the debate that has characterized the process that led to the enactment of Public Benefit Organizations Act, 2013 and even after it became law was vibrant and attracted attention from various sectors and stakeholders.

In recognition of this widespread interest and debate in the charitable sector and in line with public participation principles enshrined in our Constitution, the Cabinet Secretary for Planning and Devolution, Ms Anne Waiguru considered it prudent to put in place a Taskforce to collect public views on the law, proposed amendments and recommend a way forward in respect to the PBO Act 2013. The Taskforce executed its mandate in line with the Terms of Reference (ToR), by holding regional consultative foras with the public and key sector stakeholders to seek their views on the law and proposed amendments.

The Taskforce received public views through oral presentations, electronic mail, oral and written memoranda. The collected and collated views form the report and informed the recommendations therein. I take this opportunity to thank the members of the Taskforce for sacrificing their time and offering their professional services throughout the life of this Task Force. The report and the recommendations thereof are an invaluable resource which I believe will take the sector to the next level for the benefit of our country and the Kenyan people.

On my own behalf and that of the entire Task Force, I take this opportunity to sincerely thank the CS for giving us this rare opportunity to steer this important process. I also thank members of the public, development partners and other stakeholders who came forward to give their views and contribute to making the process successful.

Hon. Sophia Abdi Noor

Chairperson

## ACKNOWLEDGEMENTS

The Chairperson and the entire membership of the PBO Taskforce takes this opportunity to express their gratitude to the Cabinet Secretary, Ministry of Devolution and Planning, Ms. Anne Waiguru(OGW)for giving us the opportunity to steer the process of collecting views from the public on the PBO Act 2013. We also thank the Cabinet Secretary for providing personnel from her office to provide technical and logistical support to the Task Force throughout the process.

We remain deeply indebted to the hundreds of Kenyans from across the country and other stakeholders who sacrificed their time to attend the public hearings and give their views on this important matter. We thank the media for partnering with us by covering the hearings, thus creating the much needed public awareness that spurred greater public participation.

Finally, I thank all members of this Task Force for their individual and collective contributions without which this process would not have been successful. To each one of you, I say a big 'Thank You!'

## LIST OF ACRONYMS

CBO's:	Community Based Organizations
CSO:	Civil Society Organization
DG:	Director General
KNCSS:	Kenya National Council of Social Services
LSK:	Law Society of Kenya
NEPAD:	New Partnership for Africa's Development
NGOs:	Non-Governmental Organizations
PBO:	Public Benefit Organizations
TF:	Task Force
UN:	United Nations
UNICEF:	United Nations International Children's Emergency Fund
SCAC:	State Corporations Advisory Committee

## EXECUTIVE SUMMARY

Following the enactment of the PBOs Act, 2013 the government, the civil society organizations and parliament all attempted to propose amendments to the said Act which resulted in further debate among stakeholders and beneficiaries of the sector.

In view of the foregoing, the Cabinet Secretary for Devolution and Planning, Ms. Anne Waiguru OGW, established the TF on the proposed amendments of the Public Benefit Organizations Act, 2013 comprising of multi-sectoral representation and chaired by Hon. Sophia Abdi Noor. The mandate of the Task Force was to receive and collate views from members of the public, stakeholders and the Government, monitor legislation touching on the PBOs Act and finally advise the Cabinet Secretary on proposed amendments.

The TF in its first meeting prepared a work plan of activities and a budget line which was approved by the Ministry. The TF selected 10 regions that were representative of the 47 counties for the public hearings.

Key recommendations of the Report are as follows:

1. As currently crafted the PBO Act does not provide for a concrete definition of what a PBO is; such definition is important.
2. PBOs should be registered under one legal regime bearing in mind that such harmonization requires broader consideration as it has implications on other legislation. Commencement of the PBOs Act should be done pursuant to article 116 of the Constitution of Kenya, 2010 on the coming into force of laws.
3. Appointments to the Authority should be subject to the State Corporation Act
4. The Authority be sufficiently empowered to effectively discharge its mandate and enhance information disclosure by PBOs for public accountability through appropriate rules and regulations
5. Transparency, accountability and monitoring of donors, stakeholders and beneficiaries in accordance with international financial reporting standards (IFRS) and more specifically on disclosure of sources and application of funds.
6. A percentage of donations received by PBOs be given to the Authority to ensure effective regulation
7. National interests and National security be addressed during registration and post registration of PBOs. Further, PBOs must uphold the security, cultural and religious values of Kenyans, the PBO Act be amended to prohibit registration of any public benefit organisation that is involved in promotion and advocacy of indecent acts as provided for in the Penal Code under Section 162-165 or is involved in promotion of the national interest of another state or is involved in recruitment, training and incitement of persons to undertake terrorist activities.

8. A representative from the Ministry in charge of National Security be a member of the Board of the Authority.
9. All proposed amendments should safeguard and ensure an enabling environment to enhance complementarity between state and non-state actors.
10. Strengthen collaboration between National Government, County Government and PBOs.

This report therefore contains a collation of all the views and Memoranda's received from both the public hearings, the official TF email: [ngotaskforce@gmail.com](mailto:ngotaskforce@gmail.com); and the NGOs Co-ordination Board offices.

The report contains a list of all the members and the secretariat and all the areas visited by the TF. The report further contains annexure that include but is not limited to the verbatim report for all the public hearings around the country, Memoranda's and comments from members of the public, the sector stakeholders and Government;

## 1.0 INTRODUCTION

Public Benefit Organisations in Kenya can be traced back to the pre-independent Kenya and are famously known as Non-Governmental Organisations (NGOs). NGOs began operations in Kenya on an ad-hoc basis. During this time, NGOs activities were mainly humanitarian and relief, religious and philanthropic focusing on welfare and charity.

Post independent Kenya saw the gradual growth of NGOs, with a broadened scope of operation. The cumulative impact of this was a more informed citizenry and significant socio-economic gains across various sectors that underline human development; ranging from civic awareness, improved access to healthcare, education, nutrition, food security, among others.

NGOs are now recognized as being primary providers of basic services and complementing Government efforts. They are also increasingly being recognized by government as significant contributors towards social and economic development. It is recognized that the success of socio economic and democratic governance transformation strategies pursued by present future Governments, is to a large extent, dependent on the performance of civil societies as a sector and as an accelerator (Sessional Paper, No 1 2006).

The regulation and co-ordination of NGOs began in 1964 with the establishment of the Kenya National Council of Social Services (KNCSS) of the then Ministry of Culture and Social Services. The KNCSS coordinated NGO activities and played an advisory role to Government on the same. However, there was still no specific legal framework to govern the NGO sector. NGOs were and still are registered under different legal regimes such as the Public Trustee Act, the Companies Act and the Societies Act among others.

Challenges of the KNCSS and the lack of a national framework for the NGO sector led to the enactment of the NGO Coordination Act 1990. This Act established the NGO Coordination Board to replace KNCSS. The Act also established the National Council of NGOs (NGO Council) as a platform for all NGOs registered under the Act with the mandate of self-regulation, capacity building and policy intervention for the sector.

The NGOs Co-ordination Act, 1990 having been enacted without a policy framework presented challenges to the sector ranging from ineffective registration processes, regulation lack of efficient coordination, public accountability and transparency.

In 2006, Sessional Paper No.1 of 2006 on Non- Governmental Organisations was developed. This policy framework is cited as "the Government's first step towards developing conducive legal administrative guidelines to govern NGOs for optimal operations."

In light of all these realities and with the Sessional Paper in place, the process of reviewing and repealing the NGOs Act, 1990 began in 2007. This process sought to bring vision, establish a more efficient, transparent and publicly accountable sector with effective leadership.

The lead actors of this review process were Parliament, NGO Coordination Board, the NGO Council and the Civil Society Reference Group. After a four year consultative process, The PBO Act was enacted in January 2013. This law provides for the establishment, operation and conduct of affairs of PBOs; with the commencement date being by notice issued by the Cabinet Secretary responsible for matters relating to PBOs.

Since enactment, there have been various attempts to amend the PBOs Act which include the proposed amendments via the Statute Law (Miscellaneous Amendments) Bill 2013 published on 1st November 2013; and the Statute Law (Miscellaneous Amendments) Bill 2014 published on 30th May 2014. It is against this background that the CS appointed the PBO TF, to deepen the space for public participation as provided for in the Constitution of Kenya, 2010.

## 1.2 THE TASKFORCE

### 1.2.1 Establishment of the taskforce

The Cabinet Secretary for the Ministry of Devolution and Planning appointed a Taskforce on the proposed amendments to the Public Benefits Organisations Act, 2013 via Gazette Notice No. 8003 of 30th October 2014. The Gazette Notice was published on 7th November 2014 in the Kenya Gazette Vol. CXVI-No 133. The Cabinet Secretary for the Ministry of Devolution and Planning officially launched the taskforce on the 4th December 2014.

The Taskforce was mandated to receive views from the public, review existing or new legislation relating to the PBOs Act, advice the Cabinet Secretary on the implementation of the Act and submit the final report to the Cabinet Secretary within three months from the date of gazettelement. The TF was officially launched in December 10<sup>th</sup>, 2014 and began work in January 2015. The timeframe was subsequently extended.

## 1.3 MEMBERSHIP

The taskforce is comprised of eleven (11) members representing various stakeholders in governance and the PBO sector and three (3) members of the Joint Secretariat.

- |    |                       |                                  |
|----|-----------------------|----------------------------------|
| 1. | Hon. Sophia Abdi Noor | Chairperson                      |
| 2. | Fazul Mahamed         | Vice Chairperson                 |
| 3. | Dr. Francis Kuria     | Inter-Religious Council of Kenya |
| 4. | Eddyson H. Nyale      | Ministry of Interior and         |

		Co ordination of National Government
5.	Gerald Macharia	Clinton Health Access Initiative
6.	Jennifer Shamalla	Advocate of the High Court of Kenya
7.	Juliana Akinyi	Non-Governmental Organisations Co-ordination Board (NGO Board)
8.	Lillian Mbogo	New Partnership for Africa's Development/Africa Peer Review Mechanism, Kenya (NEPAD).
9.	Sarah Muhoya	Kenya Women's League of Voters
10.	Stephanie Muchai	Civil Society Organisations Reference Group (C.S.O Reference Group)
11.	Wilson K. Kipkazi	The Non-Governmental Organisations Council (NGO Council)
12.	Lindon Nicolas	Joint Secretary
13.	Jack Muriuki	Joint Secretary
14.	Nicholas Okemwa	Joint Secretary

#### 1.4 TERMS OF REFERENCE (TOR)

The terms of reference of the Taskforce were to:

1. Receive views from stakeholders on the proposed amendments to the Public Benefits Organizations Act, 2013;
2. Monitor the legislative process of amending the Public Benefits Organizations Act, 2013;
3. Advise the Cabinet Secretary on implementation of the amended Public Benefits Organizations Act, 2013

#### 1.4.1 Interpretation of Terms of Reference

The taskforce interpreted its tasks as follows:

TOR/1 - Receive views from stakeholders on the proposed amendments to the Public Benefits Organizations Act 2013.

- The taskforce understood its task to be the collection of views from the public/stakeholders.
- In interpreting the task, the taskforce noted that the term "proposed amendments" refers to amendments that are subject of a legislative process of either the National Assembly or the Senate of Kenya.

TOR/2 - Monitor the legislative process of amending the Public Benefits Organizations Act 2013.

- The taskforce understood its task to be monitoring an ongoing or newly initiated legislative processes of amending the PBO Act.

TOR/3 - Advise the Cabinet Secretary on implementation of the amended Public Benefits Organizations Act, 2013.

- The taskforce understood its task to be identifying key matters pertaining to the implementation of the amended PBO Act and providing recommendations to the Cabinet Secretary on the same.

#### 1.5 METHODOLOGY

The taskforce was guided by the terms of reference to adopt the following approach:

##### 1.5.1 Rules of the taskforce

The taskforce agreed on rules that would guide the conduct and engagement of the members in fulfilling its mandate.

##### 1.5.2 Work plan

Pursuant to the Gazette Notice, the taskforce prepared a detailed work plan to guide its activities. This work plan detailed dates and regions of public forums, meetings and literature review.

##### 1.5.3 Weekly Meetings

The taskforce held weekly meetings to discuss substantive and administrative issues. These meetings focused on ensuring successful delivery of the work plan as well as discussing any matters arising relevant to the mandate of the taskforce.

##### 1.5.4 Records

The record keeping of the taskforce for regional forums, and all other meetings detailed below were done by way of; a summary of public views, a verbatim report, audio and video recordings. (found in the annexure of the report).

### 1.5.5 Collection of Public/stakeholder views

Public/Stakeholder views were collected through public hearings (oral and written submissions), the NGOs Co-ordination Board offices and via the official taskforce email - [ngotaskforce@gmail.com](mailto:ngotaskforce@gmail.com)

### 1.5.6 Public Hearings

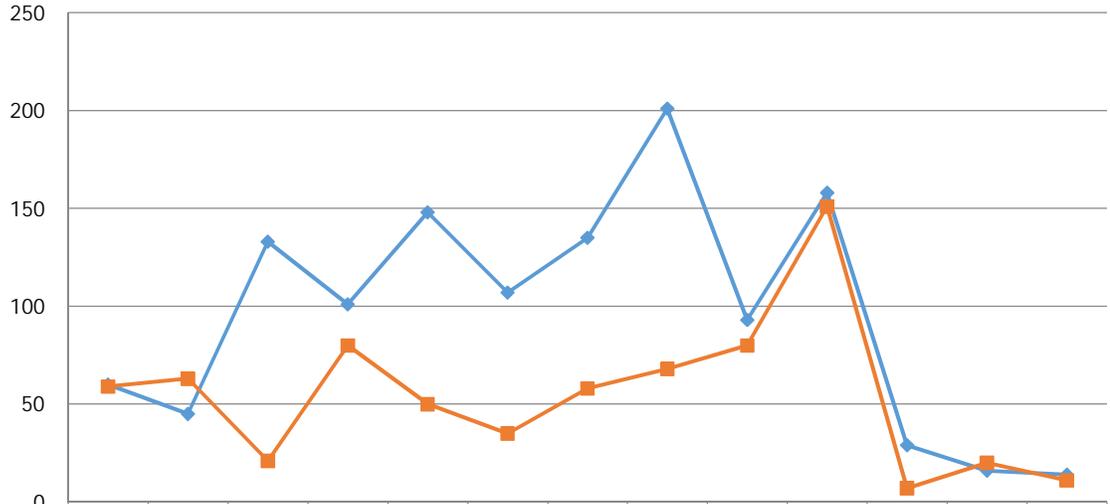
The TF adopted a regional approach of clustered counties. Ten (10) regional forums were held in Nyeri, Meru, Mombasa, Garissa, Kitui, Nakuru, Kisumu, Kakamega, Eldoret and Nairobi to collect stakeholder views pursuant to the taskforce terms of reference.

The attendance of participants at the regional forums was as follows:

### 1.6 Public participation during the forums

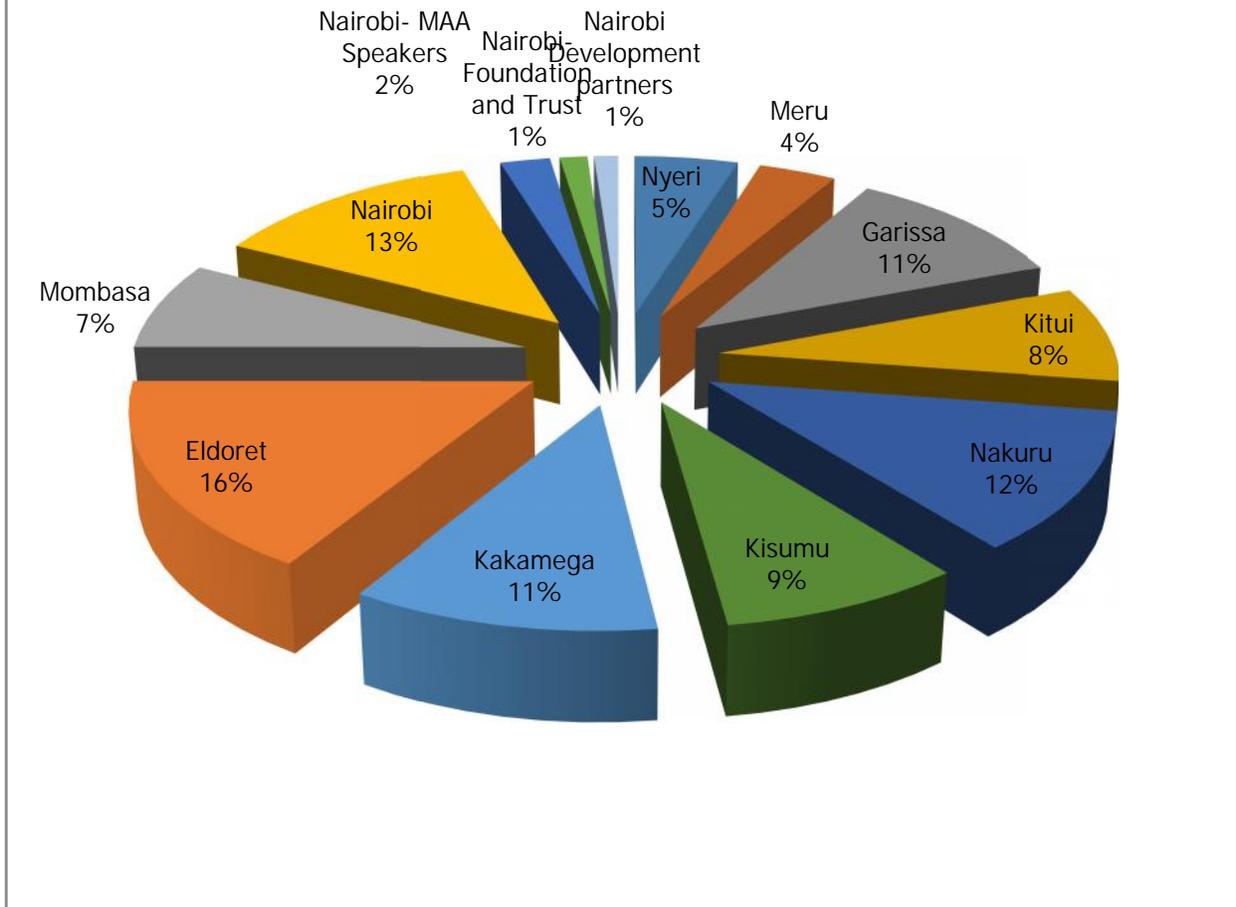
Forums	Male	Female	Total
Nyeri	60	59	119
Meru	45	63	108
Garissa	133	21	154
Kitui	101	80	181
Nakuru	148	50	198
Kisumu	107	35	142
Kakamega	135	58	193
Eldoret	201	68	269
Mombasa	93	80	173
Nairobi	158	151	309
Nairobi- MAA Speakers	29	7	36
Nairobi- Foundation and Trust	16	20	36
Nairobi Development partners	14	11	25
Grand Total	1,240	703	1,943

Public participation for the forums



Male	60	45	133	101	148	107	135	201	93	158	29	16	14
Female	59	63	21	80	50	35	58	68	80	151	7	20	11

## Participation during Public Hearings



The total number of participants at public forums was 1,943. Results indicate that there was high turnout of male participants (63.8%) in the forums compared to female participation (36.2%).

### 2.0 Public Hearings

To ensure national coverage, inclusivity and greater outreach within the time frame granted to the TF, Counties were clustered as follows:

- 2.1 Nyeri: Muranga, Kirinyaga, Kiambu and Nyandarua (Central)
- 2.2 Meru: Isiolo and TharakaNithi (Upper Eastern)
- 2.3 Mombasa: TaitaTaveta, Kilifi, Kwale, Lamu and Tana River (Coast)
- 2.4 Garissa: Mandera, Wajir (North Eastern)
- 2.5 Kitui: Machakos, Makueni, Marsabit (Lower Eastern)
- 2.6 Nakuru: Kajiado, Samburu, Laikipia, Baringo, Bomet, Narok and Kericho (Lower Rift)
- 2.7 Kisumu: Siaya, Migori, Homa Bay, Kisii (Nyanza)
- 2.8 Kakamega: Busia, Bungoma, Vihiga (Western)
- 2.10 Eldoret: UasinGishu, Nandi, Trans Nzoia, West Pokot, Turkana and ElgeyoMarakwet (North Rift)
- 2.11 Nairobi: Nairobi

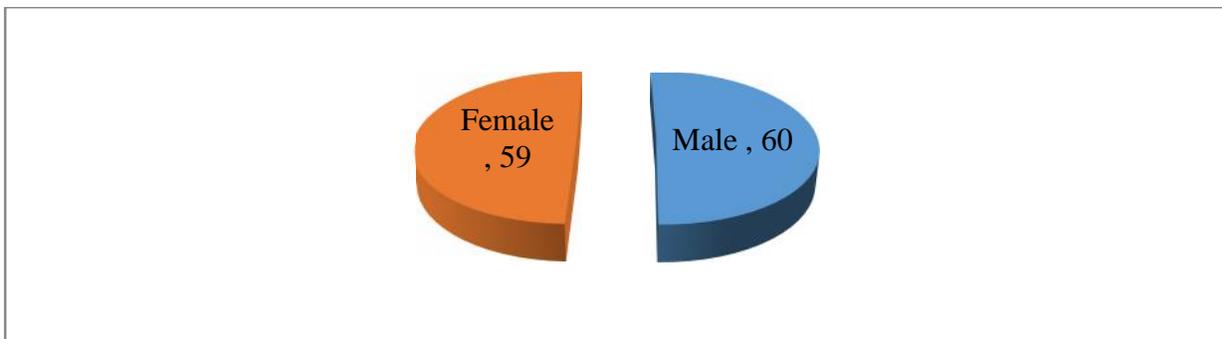
### 2.3 Levels of Participation

The public participation and representation at each public forum can be determined from the pie charts and figures illustrated below:

#### 2.3.1 Nyeri

Public participation

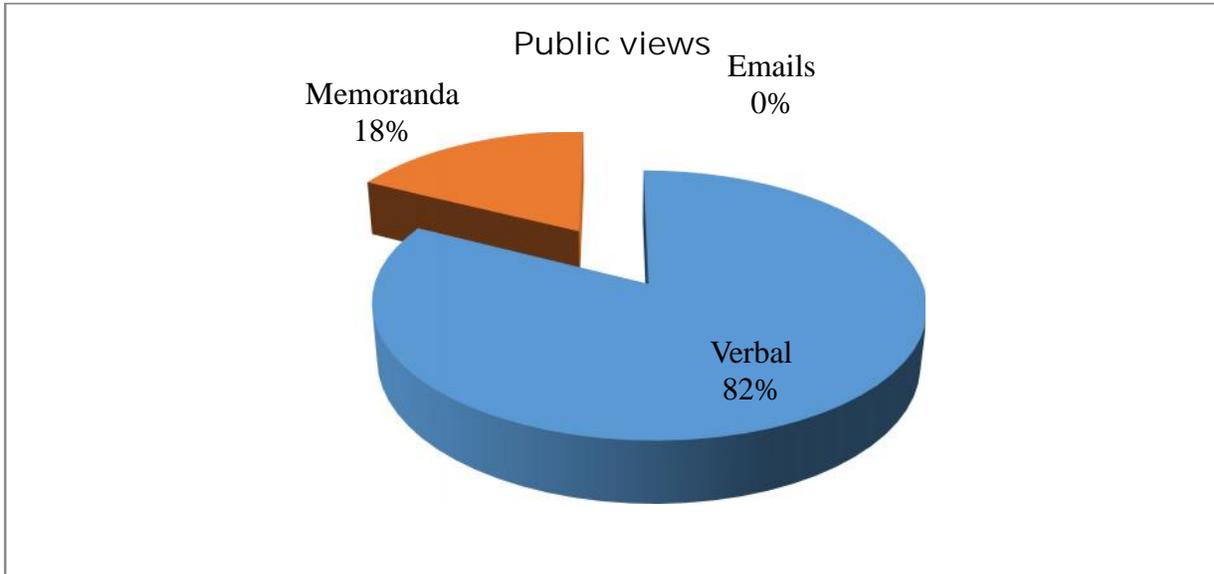
Male	Female	Total
60	59	119



From the above diagram, both the male and female gender were almost at equal representation.

## Public Views

Verbal	Memoranda	Emails
33	7	0

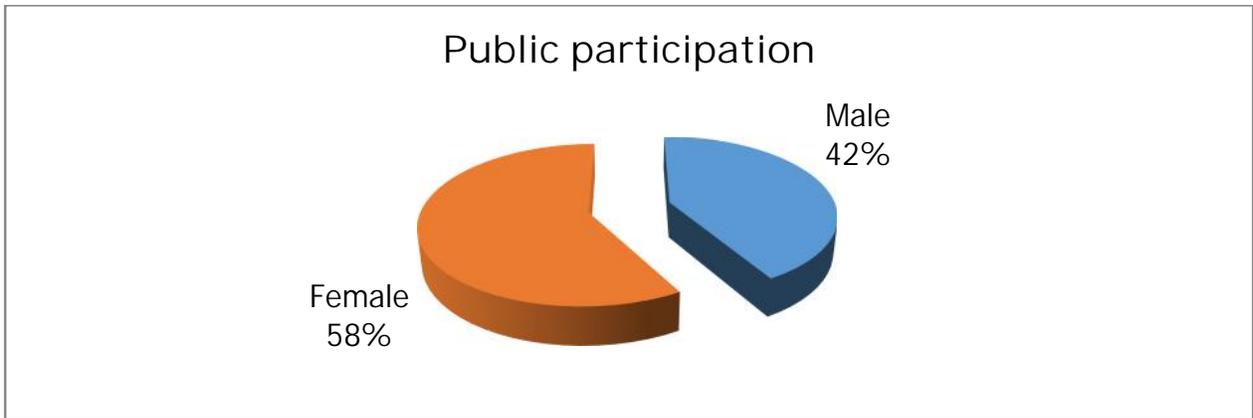


From the diagram above the public views were represented by 33 verbal views and 7 memoranda, this represents 82 percent and 18 percent respectively.

### 2.3.2 Meru

#### Public participation

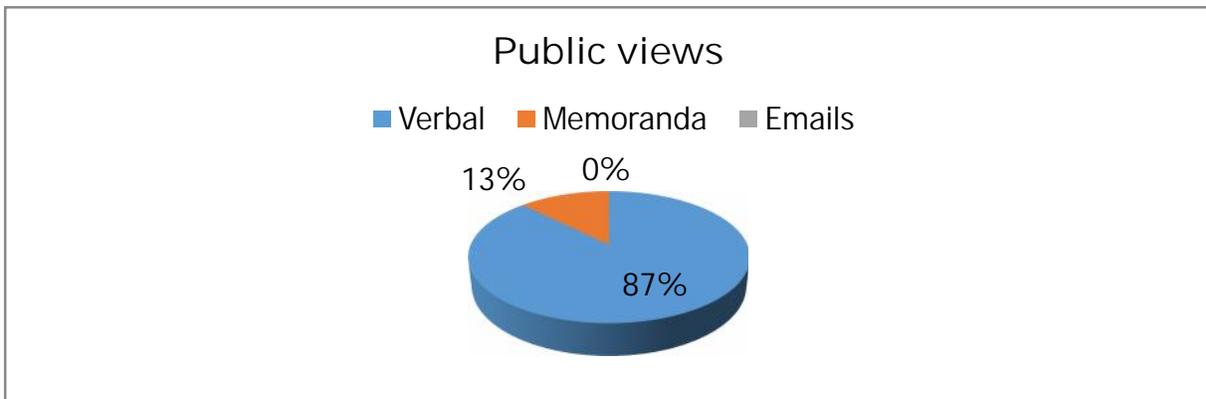
Male	Female	Total
45	63	108



From the above chart it was deduced that levels of participation were almost equal for both males and females, which translates to 58% and 42% respectively.

#### Public Views

Verbal	Memoranda	Emails
35	5	0

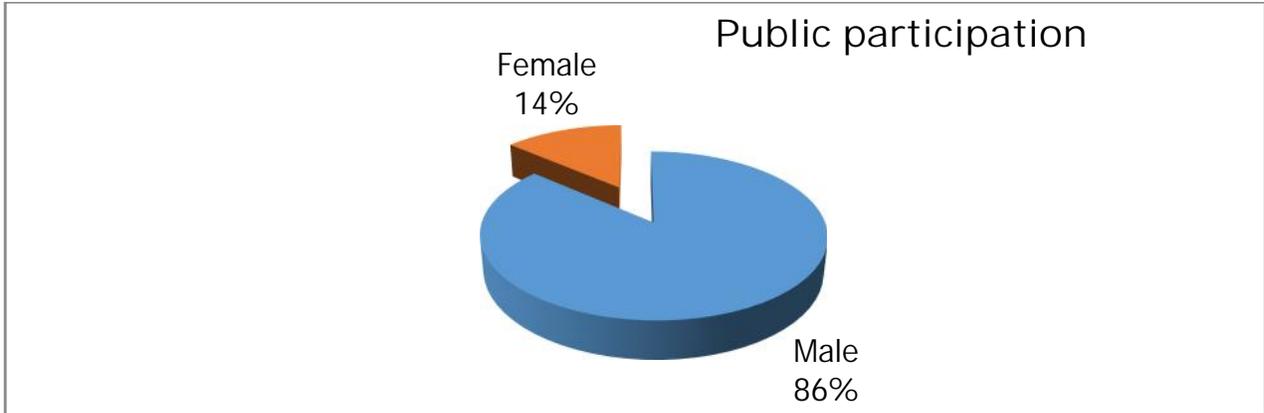


From the diagram above the public views were represented by 35(87%) verbal and 5(13%)written submissions. There were no emails presented.

#### 2.3.3 Garissa

##### Public participation

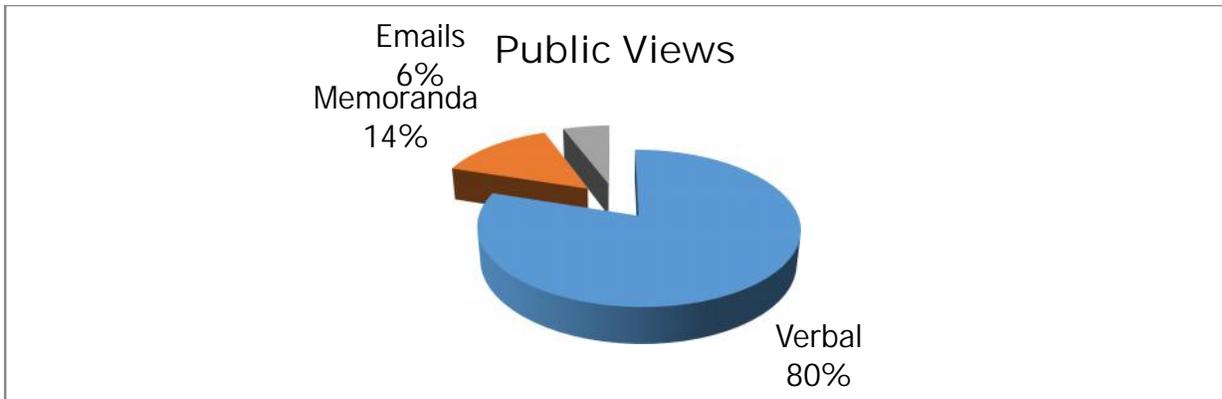
Male	Female	Total
133	21	154



From the above chart it was deduced that the male were the majority participants 133 while the female were 21 respectively, which translates to 86% and 14% respectively.

#### Public Views

Verbal	Memoranda	Emails
28	5	2

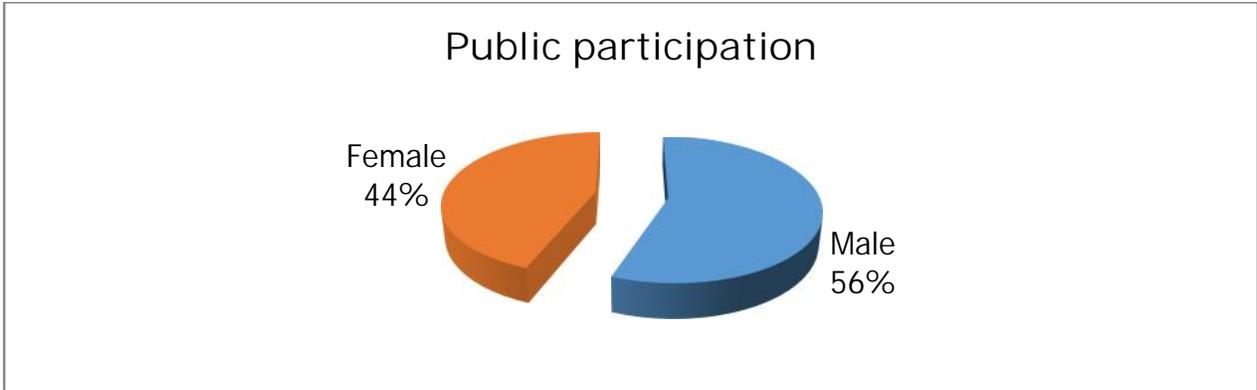


From the diagram above the public views were represented by 28(80%) verbal, 5(14%) memoranda's and 2(6) %) respectively

#### 2.3.4 Kitui

##### Public Participation

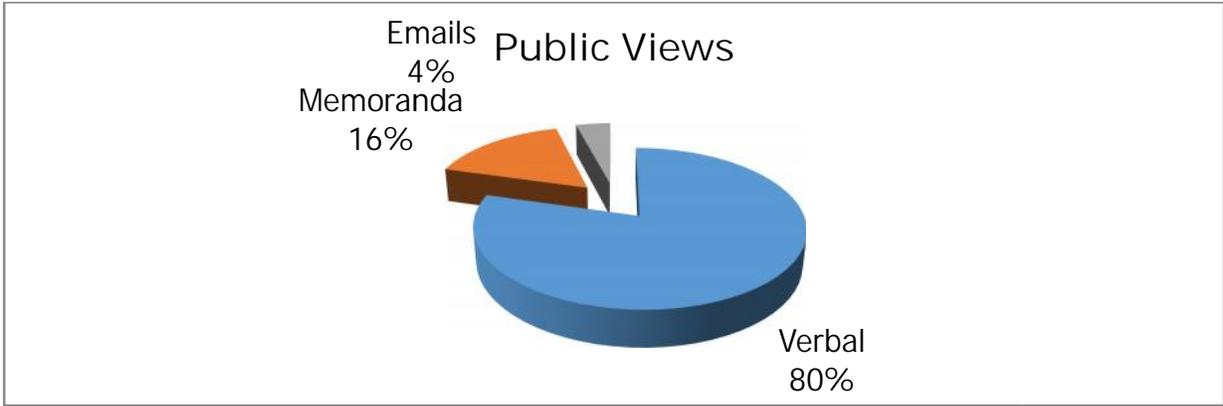
Male	Female	Total
101	80	181



From the above chart it was deduced that the male were the majority participants 101 (56%) while the female were 80 (44) respectively.

Public Views

Verbal	Memoranda	Emails
58	12	3

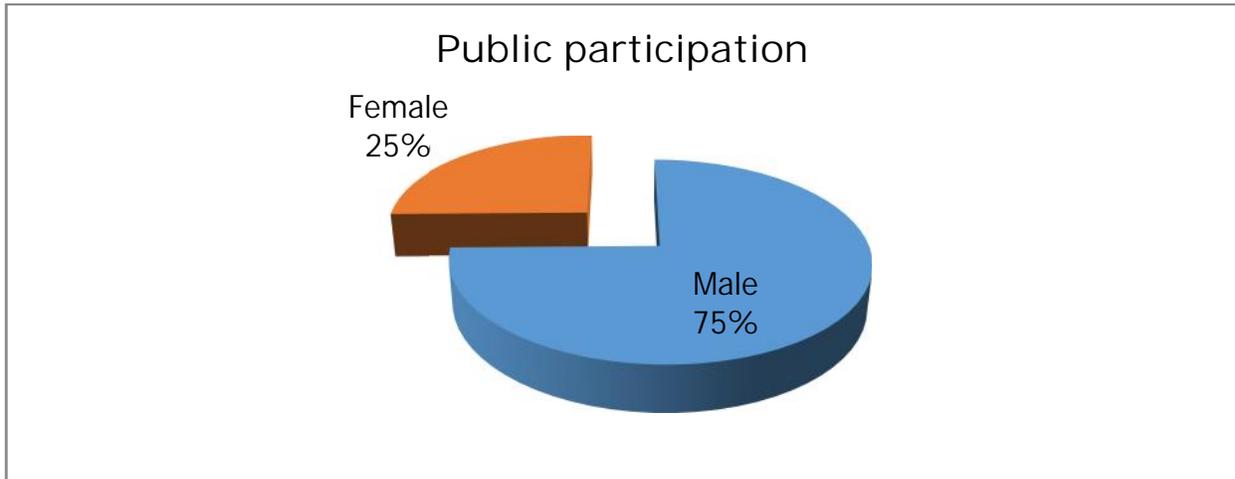


From the above figure, the public views were represented by 58 (80%) verbal, 5(16%) memoranda's and 3(4) % respectively

### 2.3.5 Nakuru

#### Public participation

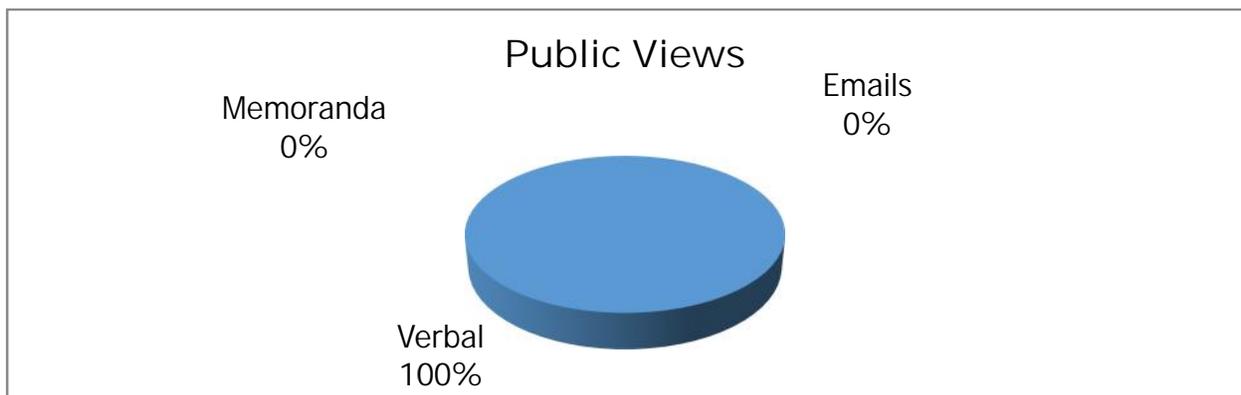
Male	Female	Total
148	50	198



From the above chart it was deduced that the male were the majority participants 148 (75%) while the female were 50 (25%) respectively.

#### Public Views

Verbal	Memoranda	Emails
67	0	0

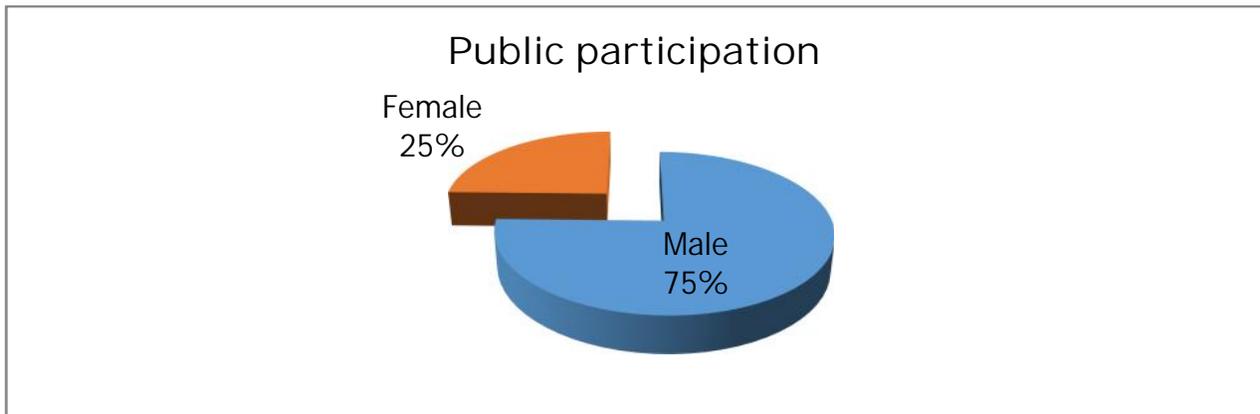


From the above figure, the public views were represented by 67 (100%) verbal. There were no memoranda's and emails.

### 2.3.6 Kisumu

#### Public Participation

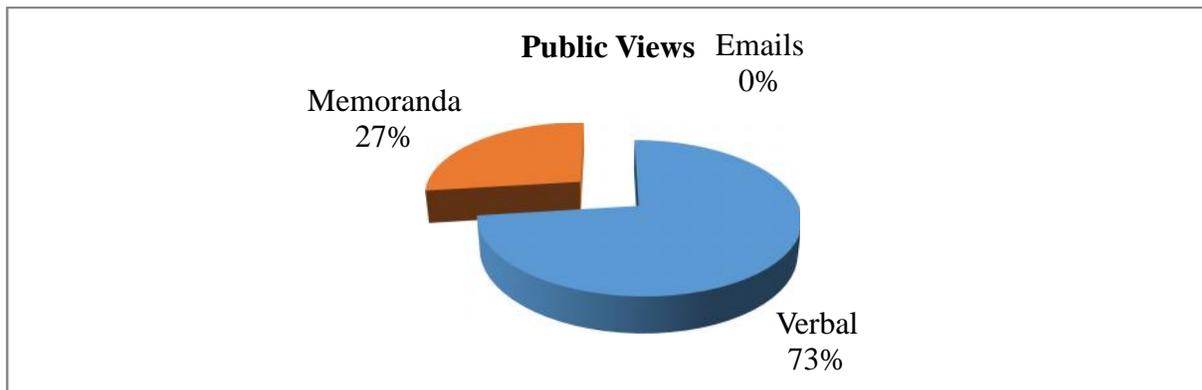
Male	Female	Total
107	35	142



From the above chart it was deduced that the male were the majority participants 107 (75%) while the female were 35 (25%) respectively.

#### Public Views

Verbal	Memoranda	Emails
46	17	0

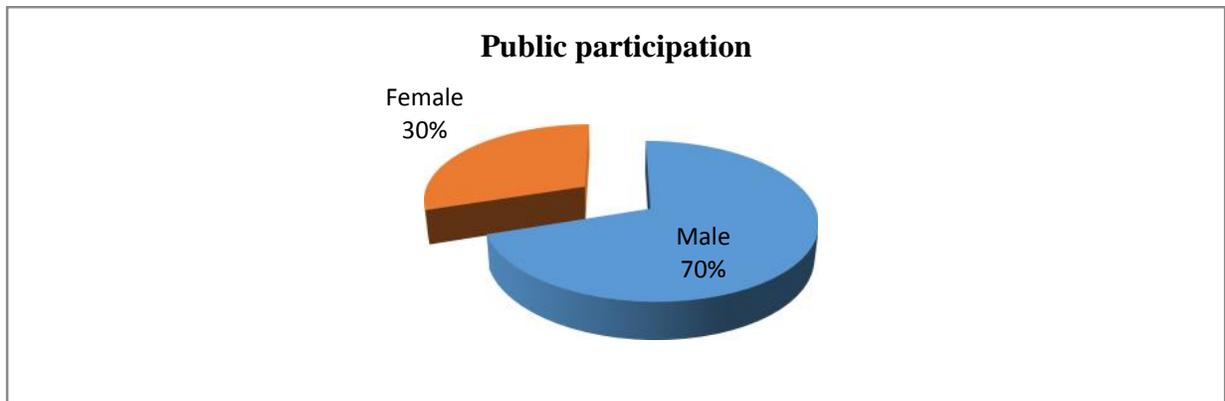


From the above figure, the public views were represented by 46(73%) verbal's, 5(16%) 17(27) %) memoranda's. There were no emails presented.

### 2.3.7 Kakamega

#### Public participation

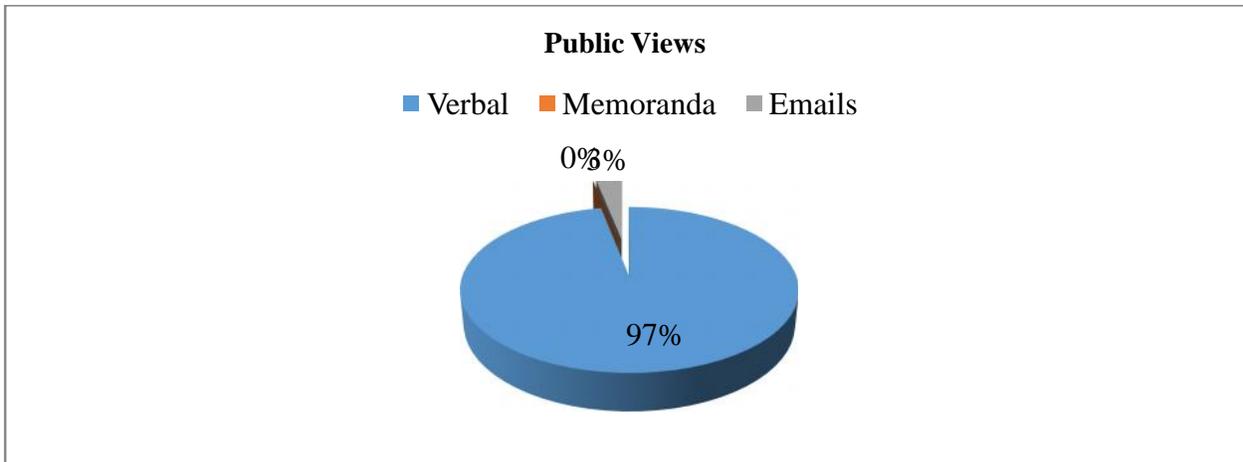
Male	Female	Total
135	58	193



From the above chart it was deduced that the male were the majority participants 135 while the female were 58 respectively, which translate to 70% and 30% respectively.

#### Public Views

Verbal	Memoranda	Emails
63	0	2

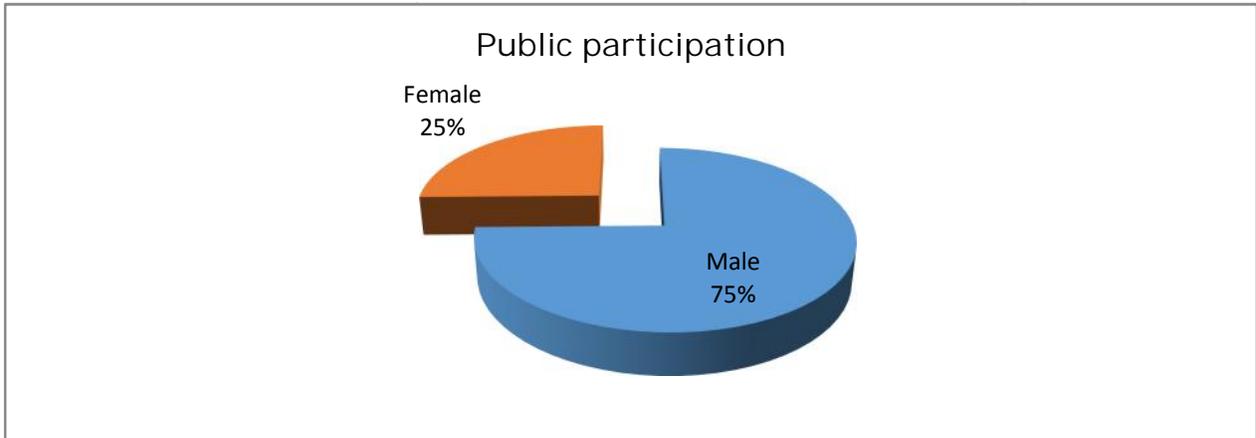


From the diagram above the public views were represented by 63 verbal views and 2 emails, this represents 97 percent and 3 percent respectively.

### 2.3.8 Eldoret

#### Public participation

Male	Female	Total
201	68	269

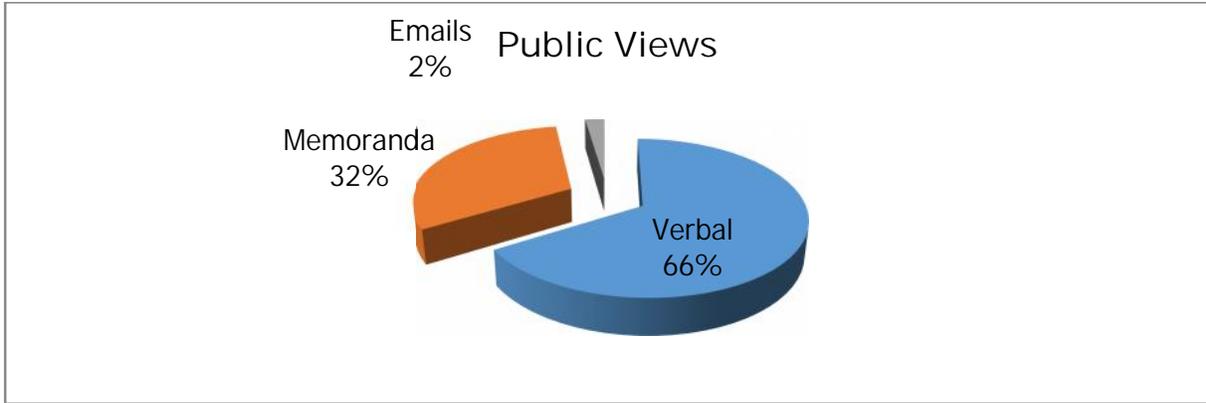


From the above chart it was deduced that the male were the majority participants (201) while the female were (68) which translates to 75% and 25% respectively.

#### Public Views

Verbal	Memoranda	Emails
57	27	2

From the diagram above the public views were represented by 57 verbal views, 27 memoranda, and 2 emails which represents 82 percent and 18 percent respectively.

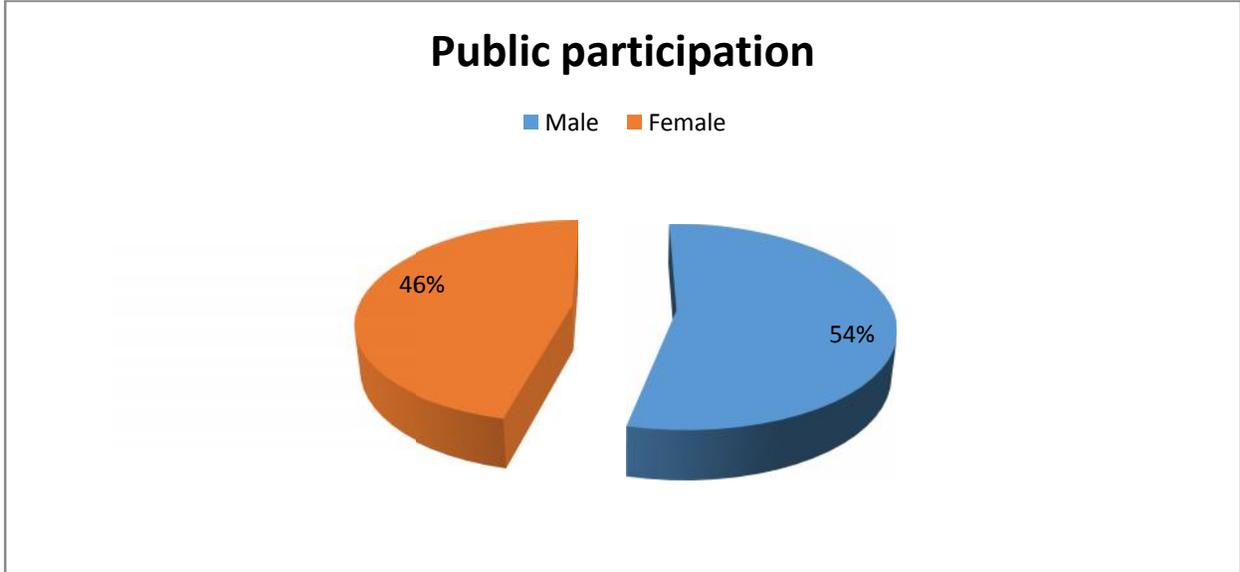


From the diagram above the public views were represented by 57 (66%) verbals, 27(32%) memoranda's and 2 (2%) emails.

2.3.9 Mombasa

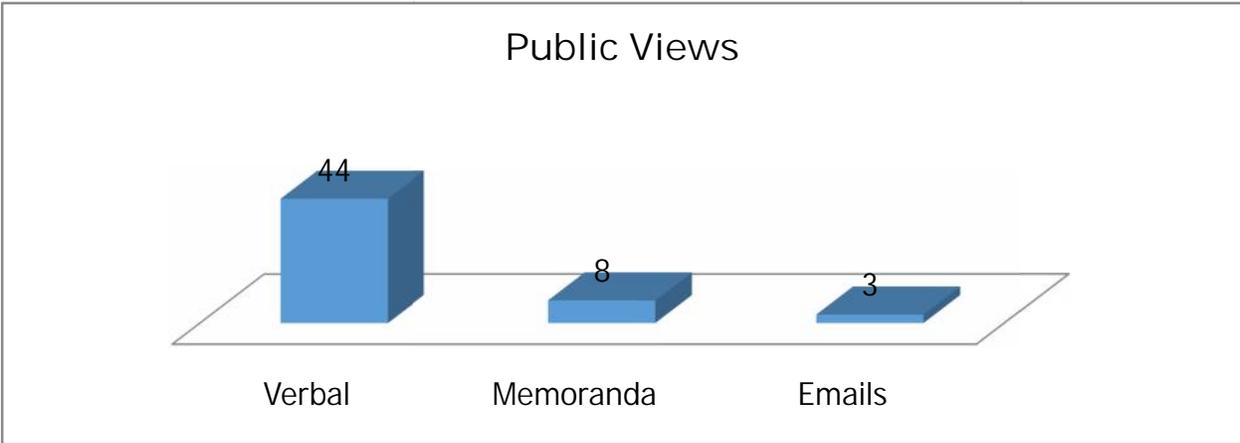
Public participation

Male	Female	Total
93	80	173



Verbal	Memoranda	Emails
44	8	3

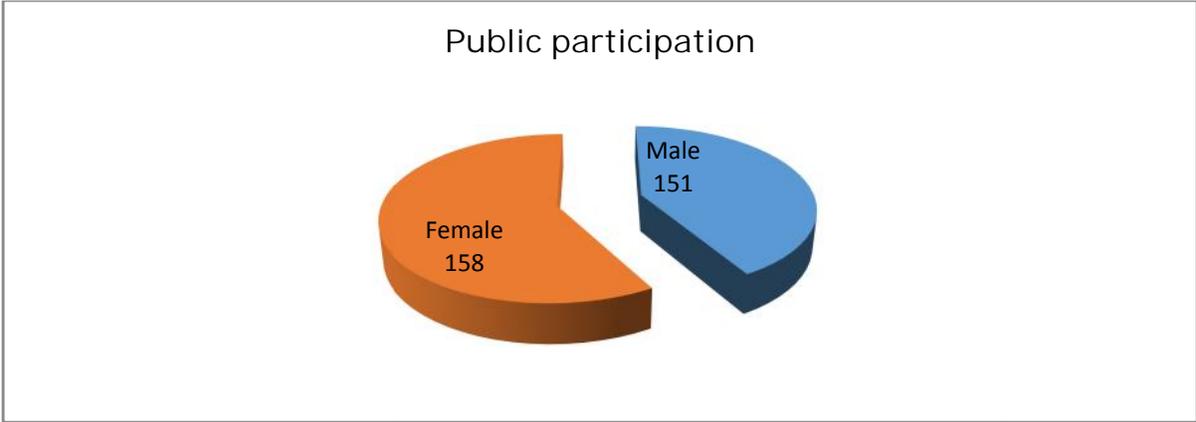
Public Views



2.3.10 (a) Nairobi

Public participation

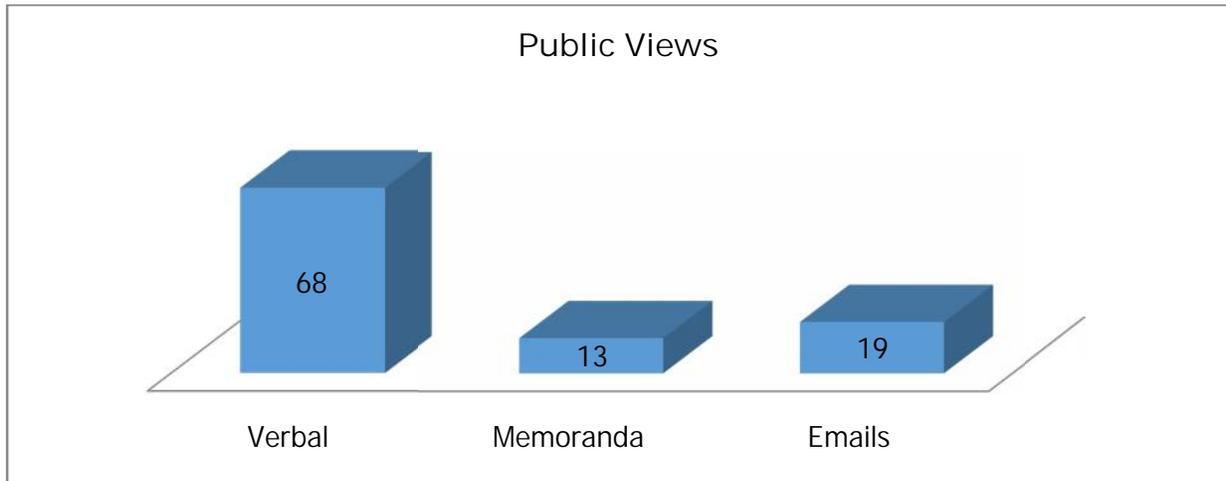
Male	Female	Total
158	151	309



From the above chart it was deduced that the female were the majority participants 158 while the male were 151 respectively.

### Public Views

Verbal	Memoranda	Emails
68	13	19

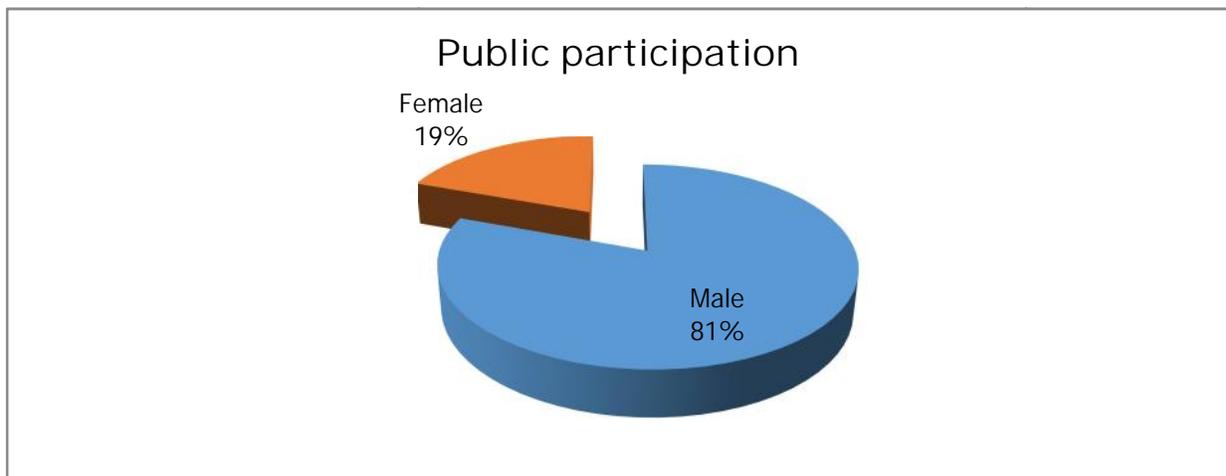


From the diagram above the public views were represented by 68 verbal 13 memoranda's and 19 respectively

### 2.3.10 (b) Nairobi- MAA' Speakers

#### Public participation

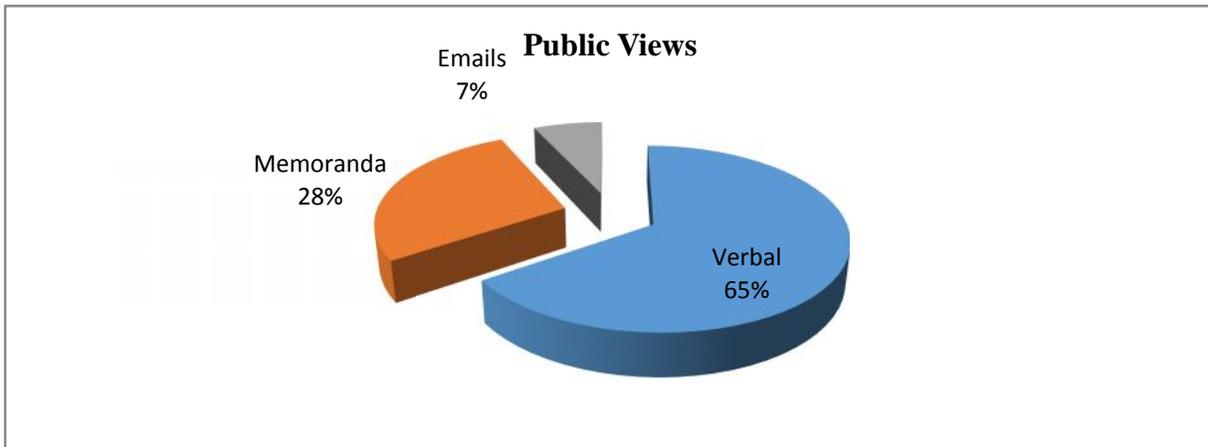
Male	Female	Total
29	7	36



From the above chart it was deduced that the male were the majority participants (81%) while the female were (19%) respectively.

### Public Views

Verbal	Memoranda	Emails
19	8	2



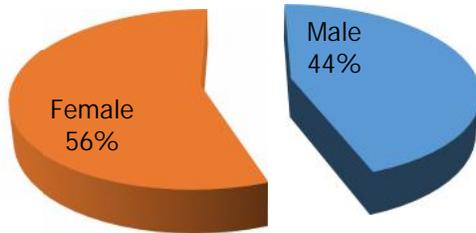
From the diagram above the public views were represented by 65% verbal, 28% memoranda's and 7% emails presented.

### 2.3.10 (c) Nairobi- Foundation and Trust

#### Public participation

Male	Female	Total
16	20	36

## Public participation

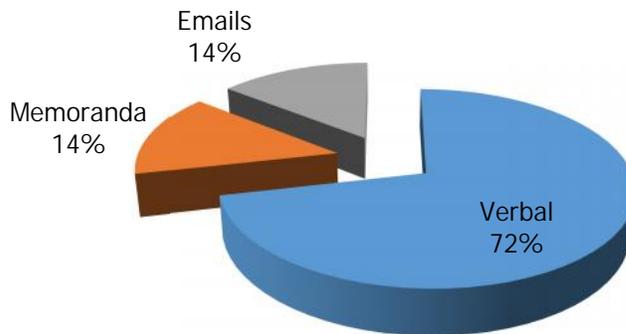


From the above chart it was deduced that the female were the majority participants 20 (56%) while the male were 16 (44%) respectively.

## Public Views

Verbal	Memoranda	Emails
15	3	3

## Public Views

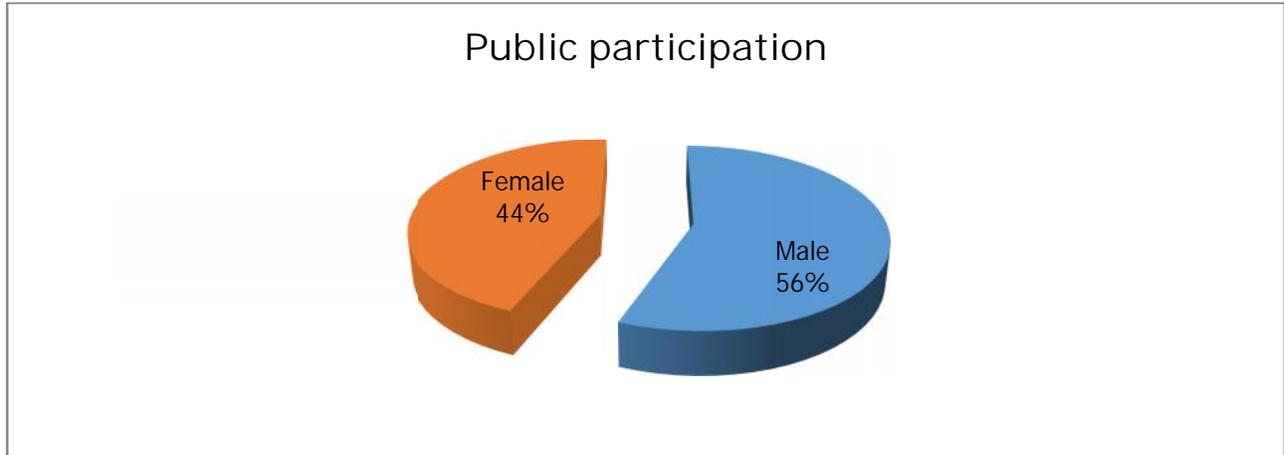


From the diagram above the public views were represented by verbal views 15 (72%), emails 3 (14%) and memoranda 7(14%), this represents 82 percent and 18 percent respectively.

### 2.3.10 (d) Nairobi Development Partners

#### Public participation

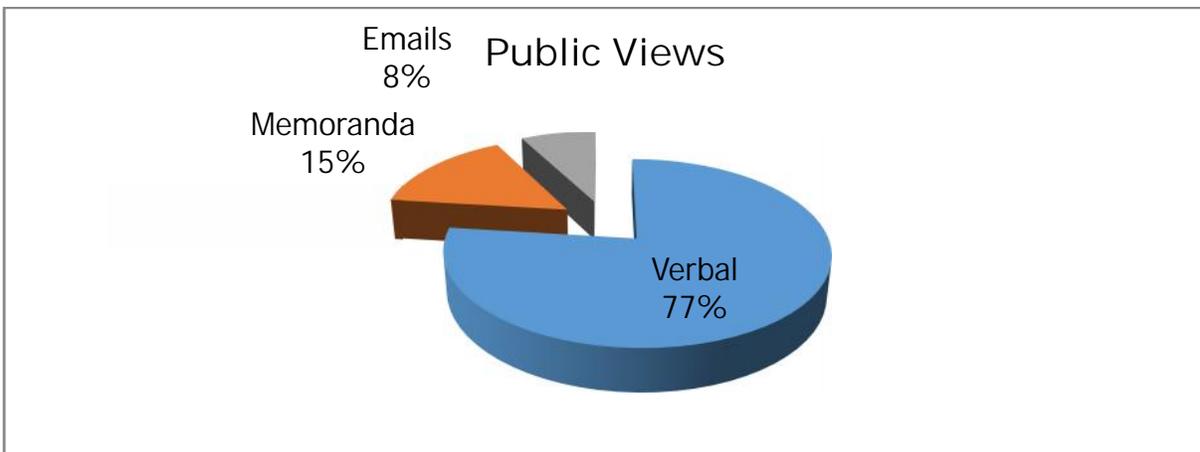
Male	Female	Total
14	11	25



The turnout of the male participants was 14 (56%) higher than the participation of female 11 (44%).

#### Public Views

Verbal	Memoranda	Emails
10	2	1



The majority of participants were reached through verbal means 10 (77%). Written memos were 2 (15%) and the emails were 1 (8%). The TF noted that in addition to

attending this forum which was specially organized for development partners, they were also represented in public hearings across the country.

## 2.4 Thematic Meetings

Four (4) groups of stakeholders made separate requests to the taskforce for special meetings. These were the NGOs Co-ordination Board, Diplomatic Missions, Development Partners and Trusts and Foundations.

Insert a table of the above participants

### 2.4.1 Experts Meeting

This meeting sought to bring together experts in PBO regulation and self-regulation, finances, Labour and social welfare, culture, national security, comparative frameworks and academia. The purpose of this meeting was for taskforce members to be appraised of broader aspects and realities of the PBO sector. By pooling expertise in various areas, it was hoped that the taskforce would be better placed to understand the working context and potential impact of proposals for the regulation of the PBO sector.

The taskforce received views on comparative international and regional regulation, National security, self-regulation, social welfare and culture.

### 2.4.2 Engagement with Legislature

The taskforce received views from two parliamentary committees namely the Justice and Legal Affairs and Labour and Social Welfare committees. The TFs objective for the meeting was to engage legislators as key stakeholders in the process. Arising from discussions legislators advised the taskforce to seek further engagement with them once the final report was completed.

## 3.0 PUBLIC PARTICIPATION

### 3.1 Public Participation

Public participation is a process that is anchored in the Constitution of Kenya, 2010. The national values and principles of governance enshrined in Article 10 of the Constitution of Kenya 2010 include participation of the people, inclusiveness and equity.

Kenya's constitutional participation principles further highlight the need to encourage the participation and inclusiveness of less represented groups including the elderly, disabled, women, children and minority groups among others.

Constitution of Kenya (118: (b)) Public access and participation:

Public participation may be defined as the involvement of individuals and groups that are positively or negatively affected by, or that are interested in a proposed project, program, plan or policy that is subject to decision making.

International best practices of public participation are defined as:

- a. Inclusive and equitable – Ensuring that all interests, including those non-represented or underrepresented are respected regarding the distribution of impacts, compensation and benefits. The participation or defense of the interests of less represented groups including indigenous peoples, women, children, elderly and poor people should be encouraged.
- b. Equity between present and future generations in a perspective of sustainability should be promoted.
- c. Educative – Contributing to a mutual respect and understanding of all IA stakeholders with respect to their values, interests, rights and obligations.
- d. Cooperative – Promoting cooperation, convergence and consensus-building rather than confrontation.
- e. Engaging conflicting perspectives and values as well as trying to reach a general acceptance of the proposal toward a decision that promotes and supports sustainable development should be pursued.
- f. Imputable – Improving the proposal under study, taking into account the results of the PP process; including reporting and feedback to stakeholders about the results of the PP process, especially how their inputs have contributed to decision-making.

Drawing from its mandate, the TF sought to achieve the following objectives through public participation:

- a) Inform the public and stakeholders on the mandate of TF.
- b) Seek views and document public opinion and analysis of the PBOs Act 2013.
- c) Gather data and information from the public about their experiences engaging in or with the public benefits organization sector. Input on all dimensions of such engagements was sought including social, cultural, economic and political dimensions.

### 3.2 Public Awareness

To further enhance public participation the TF rolled out a comprehensive communication strategy that included press conferences, on site news coverage, as well as targeted advertisements placed in both electronic and print media. Regional and vernacular stations were widely used to disseminate information on the public hearings. Media were a critical stakeholder throughout the process.

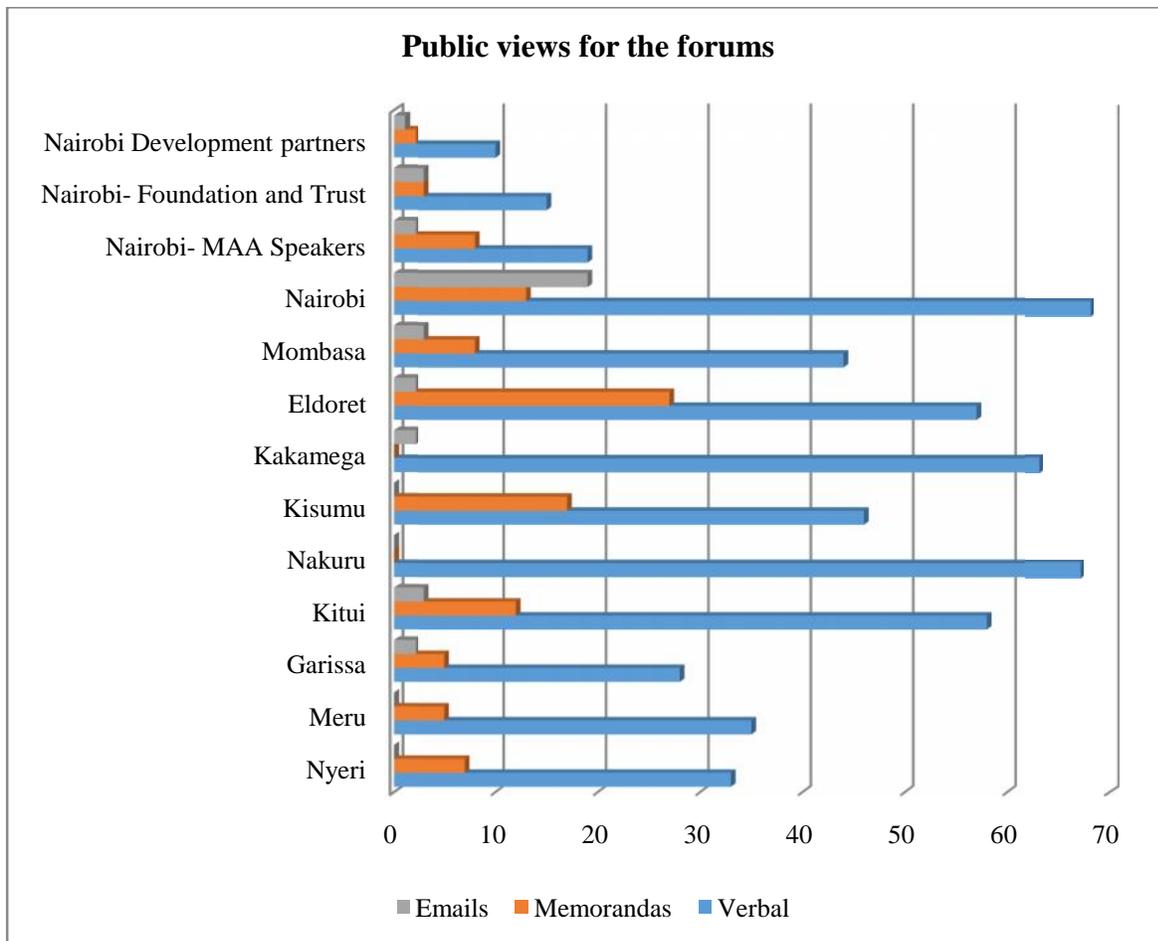
### 3.3 Equity and inclusivity

The taskforce conducted public hearings through a sequenced method by receiving views from individuals represented at each hearing, before receiving views from sectoral representatives which included women, elderly, persons with disability, children, faith based, health, education, human rights, governance, humanitarian and networks.

In the same vein of equity and inclusivity, the taskforce observed that Kajiado, Narok, Samburu and Turkana were not represented in any of the regional forums. Therefore the taskforce proceeded to organize an extra public forum to hear views from these counties as indicated in the table and figure below:

### 3.4 Types of Public views for the forums

Forums	Verbal	Memoranda's	Emails
Nyeri	33	7	0
Meru	35	5	0
Garissa	28	5	2
Kitui	58	12	3
Nakuru	67	0	0
Kisumu	46	17	0
Kakamega	63	0	2
Eldoret	57	27	2
Mombasa	44	8	3
Nairobi	68	13	19
Nairobi- MAA Speakers	19	8	2
Nairobi- Foundation and Trust	15	3	3
Nairobi Development partners	10	2	1



It was established as presented in the figure above that a majority of views, 518, were reached through verbal means, followed by 107 which were conveyed by written memoranda. Only a few views 37 were reached through emails in the forums.

### 3.5 Information and Public Engagement

A key preliminary consideration of the taskforce in getting stakeholder views was the need to ensure maximum participation at the public forums as this would ensure the broadest representation of views from stakeholders. In order to achieve this, it was agreed that members would mobilize the groups and sectors they represent in the taskforce. All possible mobilization outside of represented groups and sectors of the taskforce was also encouraged.

The Taskforce published its mandate and schedule of public forums as discussed above. There was no provision of further information to participants participating in any of the public forums. Participants in the various forums raised concerns about lack of provision of copies of the PBO Act and proposed amendments as referred to in the taskforce mandate. Participants were advised that the Act has been in existence for 2 years,

therefore familiarity with its contents was an assumed basis of engagement at the public forums dispensing with the need to provide copies of the Act.

Participants also raised concerns about why copies of proposed amendments had not been provided either in advance or at the public forums to ensure more meaningful engagement based on the Taskforce mandate (TOR/1). Participants were advised pursuant to the interpretation of TOR/1 that the taskforce did not isolate any particular proposals on which to receive stakeholder views therefore did not provide specific "proposed amendments."

### 3.6 RESULTS OF PUBLIC VIEWS

The Taskforce collated and summarized public views and grouped them into eleven thematic areas namely:

1. Amendments
2. Registration
3. Regulation
4. Accountability
5. National Security
6. Enabling Environment of PBOs
7. Transition
8. Monitoring
9. Unique issues
10. Monitoring
11. Capacity Building

The following section captures an analysis of specific contributions/views by the public and stakeholders in respect to each of the above thematic areas.

#### 3.6.1 Amendments

The public expressed varied views with respect to desired amendments to the PBOs Act as follows:

All the stakeholders and the public were unanimous that there were grammatical errors, misspellings and inconsistencies with existing legislations in the PBOs Act. A section of the public/stakeholders, the development partners, representatives of diplomatic missions, the NGOs Council and Civil Societies Reference Groups

proposed that the Act be first commenced before any amendments can be made. Some of the diplomatic missions that participated in the special public hearing include but are not limited to:

No.	Name	Organization	Country
1.	Annie Wangui	KOICA	Korea
2.	Anna Dorney	Australia High Commission	Australia
3.	Andrea Peschke	German Ambassador	Germany
4.	Farrah Musani	Canadian High Commission	Canada
5.	Marion Deriaud	French Embassy	France
6.	Gustaf Salomonsson	European Union	
7.	Andrea Marino	Italian Embassy	Italy
8.	Rarea Freeman	USAID	United States of America
9.	Robert F. Godec	US Ambassador	United State of America
10.	Murat Tiryaki	Turkish Embassy	Turkey
11.	Tony Gardner	DFID UK	United Kingdom
12.	Gry Wielsen	Danish Embassy	Denmark

Another section of the public/stakeholders proposed amendments. The proposed amendments were as follows:

- The Act be amended to provide for categorization of PBOs by size so that not all PBOs are treated equally especially in the registration requirements.
- A percentage of funds received by PBOs be donated to the authority
- PBO Act is progressive and in support of its amendment.
- NGOs need to have an agreement with the government about the issue of funding.
- Amendments should be aimed at ensuring that PBOs serve Kenyans better.
- There are contradictions, inconsistencies misspellings and grammatical errors in the Act. {Examples include voluntary deregistration appearing severally in the Act}
- The PBO Act needs to be commenced immediately and amended later.
- Article 54 of the Constitution of Kenya should be incorporated in the Act {Persons with disabilities}
- Section 2 (1) the Cabinet Secretary responsible for planning and devolution and Section 5 (2) excluding other organizations from being PBOs should be amended.
- The Act is a progressive law that needs to be implemented transparently and in line with constitutional provisions.
- Previously proposed amendments were retrogressive and speakers expressed opposition to any amendments.

- Capping of funding at 15% was rejected.
- Proposals were made to the scrapping of The Tribunal and that aggrieved parties be permitted to go to the High Court as an inherent court {Section 52:1 provides that the Tribunal shall have all the powers of a subordinate court of the first class}
- Government should provide funding to PBOs if capping is going to be at 50%
- The registration fee is too high. Currently under the NGOs Co-ordination Act, 1990 the registration of International NGOs is KES. 30, 000 and KES. 16, 000 for local NGOs
- There should be no regulations of PBOs with regards to internal administration. Hence section 24 and 25 of the Act must be amended to delete these sections
- PBOs should be encouraged to maintain a code of standards as stipulated in section 24 and organizational integrity and internal self-regulation as per section 25.
- Amend Ss.2 and 11(2)(a) & (3)
- Amend Ss. 2(4), 2(6), 3(a) (iii)

### 3.6.2 Registration of PBOs

In respect to registration of PBOs the following proposals were made:

- Registration for PBOs should be compulsory.
- New PBOs should be registered within 30 days timelines for the registration process.
- There was support for PBOs to be registered under one legal regime.
- The names of the PBOs should be a true reflection of its activities and should not mislead the public.
- An entry into the register held by the Authority should be the final proof of registration.
- Boards of international PBOs need to have at least 50% of their members as locals.
- Re-registration is unnecessary NGOs should update their records with the Authority to transit to PBOs.
- Certificate should be proof of registration.
- There should be temporary permit to enable IPBOs responding to disaster during emergencies.
- On de-registration stakeholders expressed the views that due process was needed with fair hearing and consultation with the Federation before de-registration.
- Categorization of PBOs so that small and new PBOs are given less onerous registration requirements.

- Encourage local philanthropy by ensuring that there are enough incentives enshrined in law to facilitate local fund raising and create the requisite environment for those funds to be properly accounted for by those administering them.
- Changes to the register should be done within 14 days, 60 days are too long.
- There can be no voluntary deregistration this should be amended
- No PBO should be exempted from registration
- Terms & conditions attached to certificate of registration dynamic
- Deregistration used erroneously at S. 61 should be amended.

### 3.6.3 Regulation of PBOs

The public/stakeholders made the following proposal regarding regulation of PBOs

- There should be an umbrella body regulating all PBOs
- PBOs should be given opportunity to self-regulate.
- Appointment of the Board to the Authority should be as per the State Corporations Act with the chairman being a presidential appointee
- Section 19 should be elaborated. There should be a clear explanation of suspension of NGOs.
- the PBO Act be amended to allow for harmonization with other legislation
- Regulation of work permit to expatriates in the sector be done by the Authority(regulation)
- Regulations on tax exemption for PBOs the Authority should be empowered to recommend compliant PBOs for tax exemption
- Authority to gain access to PBOs for purposes of investigations/inquiries – obtain exparte orders where there is resistance (Anton Pillar orders)
- The regulator should be given more prominent role in the protection of assets of PBOs being wound up.
- The Act needs to address the current constitutional dispensation of a devolved governance structure and enable the Authority to liaise closely with County Governments within its regulatory mandate, so that these Governments contribute to the process of holding PBOs operating in their Counties accountable.
- All IPBOs should be registered if they are to implement activities in Kenya and they should have local substantive boards and not authorized agents
- Membership to umbrella body should be voluntary
- The term of office for members of a governing body for a PBO be reduced from 5 to 3 years
- It was also noted that there was need for government to show leadership in accountability and transparency in dealing with the sector.

- Regulations for PBOs should be friendly with the rules of natural justice upheld when applying them.
- For independence of the Board, views were expressed that the Chairperson should be elected by the Board members.
- There should be a regulation in law such where there is suspected fraud.
- Law should empower regulators to enter premises without court orders.
- The PBO Act be amended to provide for freezing of bank accounts, black listing of NGOs.
- That Compulsory registration be for organizations not yet registered.
- The PBO Act be amended to consider criminal offences by PBOs
- PBOs must be regulated by government.
- PBOs be regulated and the scope of that regulation built into the amendments.
- There be clear parliamentary, judicial and public oversight built into the Act and allowing redress at all levels.
- Regulations be published and/or amended by the Cabinet Secretary with the involvement of the Authority.
- PBO Act to provide for beneficiary participation in projects conception and implementation.
- PBO Act to provide for explicit process that enhance accountability to the public.
- Additional views indicated that asking PBOs to publish audited accounts in the daily newspapers may make them incur very high costs and spend resources meant for beneficiaries.
- Another mechanism for making these reports public needs to be devised.
- The Director General of the Authority be appointed through a competitive process and subjected to vetting by Parliament.
- If there is no court order then regulators cannot access the premises.
- The Attorney General not sit on the Board.
- Personal liabilities be introduced for PBOs
- The Composition of the Board of the Authority be amended to comprise of 5 government representatives 5 PBO Representatives.
- There is no provision for vice chair

#### 3.6.4 Accountability of PBOs

The public/stakeholders made the following proposals with regard to accountability by PBOs

- Donors should be made to account for funds donated to PBOs through the Regulator
- Many stakeholders expressed the need for PBOS to be accountable and transparent. For this they needed to furnish the government through the PBO Authority a report of their funding and activities.
- The Authority to use the reports to punish rogue PBOs.

- It was recommended that the Act also provide for accountability of directors of PBOs.
- Accountability and transparency across the Board. Donors do not monitor and evaluate effectively.
- PBOs engage in income generating activities be audited by the regulator and where they are found to be making profits for themselves, they should be sanctioned.
- PBO Act be explicit on the need and the mechanisms for holding PBOs accountable.
- PBO Act to provide for a robust and transparent mechanism for accountability.
- There should be no limitation on the Authority in so far as the publicizing of PBO reports and audited accounts are concerned; and those should make available to any member of the public expressing interest or any state organ requesting the same.
- In the formation of the Disputes Tribunal, the Chief Justice be provided with a clear mechanism for choosing the members of the tribunal and establishing the rules necessary to make the tribunal functional.
- Introduce International Financial Reporting Standards (IFRS) for PBOs
- Donors to share information with the authority on PBOs funded and the purposes for the funds
- PBOs be accountable to beneficiaries who benefit from the activities of the PBOs by making funds received for projects known to the beneficiaries
- Accountability be on both sides from the government as well as the PBOs

### 3.6.5 National Security

The public/stakeholders observed that the sector is vulnerable to organized criminal activities such as money laundering, terrorism financing, corruption, diversion and embezzlement of donor aid, child trafficking to mention but a few. It is against this background that the Taskforce received the following views:

- The issues of national security be addressed during registration and follow up on activities of PBOs.
- The Act should take into consideration terrorism financing, trafficking, radicalization of Kenyans
- Organizations with huge funding should be closely monitored by the national security
- PBO Act to provide for continuous vetting of board of directors of PBOs.
- Religious leaders be consulted on faith based organisations
- Some organisations masquerade as PBOs however are actually political parties.
- The Foreign Agents Registration Act (FARA) was enacted in 1938. FARA is a disclosure statute that requires persons acting as agents of foreign principals in a political or quasi-political capacity to make periodic public disclosure of their

relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities.

- There should be no categorization of civil society organisations in Kenya
- However an organization acting on behalf of non-citizens in a political or quasi political nature in Kenya then would it not be prudent for Kenyans to be aware of this.
- Human trafficking is a business PBOs are known to be trafficking children to Saudi Arabia. Some are training them to be terrorists. (Criminal offences – tie)
- Respect for cultural values (gays and lesbians should be looked into keenly as the same erode the African value systems)

### 3.6.6 Enabling Environment of PBOs

An enabling environment was deemed to be critical to the operations of the sector.

- PBOs complemented the work of government and thus it was incumbent on government to facilitate the work of PBOs.
- PBOs are crucial in the development of the nation hence should be streamlined.
- Government to build capacity of PBOs to ensure sustainability and issuing work permits to expatriate staff and volunteers.
- Government to share the funds obtained through registration to fund PBOs.
- Tax exemptions be included in the Act.
- The authority be given enough funding to aid in streamlining the sector
- PBOs to collaborate with county governments.
- Given that these organisations supplement the government, transparency and accountability are important.
- 10% of donations received by PBOs be given to the authority for effective regulations
- PBO Act to encourage partnerships between the private sector, government, communities & Donors
- Government has a responsibility to provide the right operating environment for PBOs to execute their various mandates and should involve PBOs, individually and/or collectively in the formulation and dissemination of Government policy affecting or touching on the mandates of PBOs.
- The Act should provide a mechanism for the Government to partner and/or fund PBOs to carry out certain activities that they are best suited to.
- The Act to allow clear tax incentives to enable PBOs to fund raise and to spend their resources directly on their beneficiaries without unnecessary tax burdens.
- PBOs to contribute 5% of their donations to the authority
- Act to enable the Authority to recommend the issuance of work permits for expatriates working for PBOs in the country.
- PBOs should not have immunities and privileges

- PBOs to promote African culture and adhere to local norms in executing their mandate, in a manner that espouses national values as outlined in the constitution.
- Anchor tribunal in the Judiciary
- The government to fund PBOs (enabling environment)
- The government should give grants to PBOs by providing for them in the National Budget. (Enabling environment)
- Terrorism has stigmatized Muslims. (enabling environment)
- The current Act is in line with international conventions.
- PBO Act to put in place mechanisms to protect people with vulnerability
- There should be collaboration between the government and PBOS.
- Donor funds should not be taxed.
- Donor impact is evident at national level it is not evident at the village level.
- Donors do not employ well trained people.
- PBO Act to take cognizant of unique structures, services and contributions of FBOs.
- The umbrella religious institutions and para-religious institution not to be subjected to the PBO Act.
- ❖ Charitable institutions owned by religious organizations not subjected to the PBO Act.

### 3.6.7 Transition

The NGOs Co-ordination Act, 1990 is the current governing legislation. It is recognized that at the commencement of the PBOs Act, the NGOs Act, 1990 will be repealed. The following amendments were proposed:

- NGOs Council not to automatically transitioning to the federation
- Neither the NGOs Council nor the federation should be in the Board of Authority
- Donors will not agree to fund PBOs through a Federation and therefore any amendments suggesting this should be excluded
- The council should be done away with completely as it is not clear what they do.
- Officers or members of PBOs not to be appointed to the Board of the authority
- Transition the NGO Council to the Federation
- Conduct county level elections.
- Membership to the federation be made voluntary
- Membership to the federation conformsto the requirement of freedom of association in the constitution.
- The Federation to act as the forum for self-regulation.
- Reduce experience requirements for membership to the federation board from 5 to 3 years to accommodate the youth
- The Federation be devolved to the counties.
- Deregistration of PBOs be in consultation with the federation

- A National validation conference by stakeholders from all 47 counties to validate the PBO Act proposal before it goes to parliament
- Donors to subscribe to a code of conduct
- The authority to cede a certain percentage of any money that it collects from PBOs to the federation
- The county PBOs be facilitated with 2% of county revenue collection
- Federation elections to be conducted by any institution not necessarily the IEBC

#### 3.6.8 Monitoring

- PBOs to contribute 1% of earnings to the Authority as happens with other regulatory regimes
- Money being brought in by PBOs should be done in a transparent and accountable manner.
- Religious organisations be monitored.
- It was noted that there was need to keep a proper follow up of PBO activities, for the PBO Authority to have offices in counties for this and that the PBO Authority Board to have equal representation of the government appointees and representatives of the PBO Federation.
- Some NGOs offer services that are different from what they claim to do PBOs should be monitored by the government to find out which Monitoring and transparency is important for national security ones are genuine.
- PBOs be regulated, monitored and evaluated. There be a grass root representation of the NGO Coordination Board. (Monitoring)
- There should be an inspectorate unit from the authority at the county level to supervise implementation of projects by PBOs. (Monitoring)
- The government to monitor all CSOs

#### 3.6.9 Capacity Building

- Regulators of PBO be strengthened and institutionalized to ensure transparency and accountability.

#### 3.6.10 Self-Regulation

- Proposed a strong Federation to control the sector.
- The sector should be under one umbrella.

#### 3.6.11 Authority

- Appointment of Chairperson by President (SCAC)
- Include PS interior in the Authority's Board
- DG appointed by cabinet secretary
- appointment of board members is captured in SCAC
- Members of federation not being part of the board of the authority

### 3.6.12 Unique issues

- Maintain an online record of donors and grantees accessible to the public.
- Concern was raised of PBOs to act with article 10 of the constitution of Kenya 2010 on national values
- Exploitation of workers by PBOs
- There was need to empower the public for them to better monitor the work of PBOs.
- Establish a public litigation fund for PBOs.

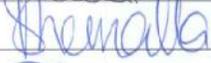
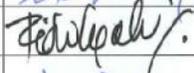
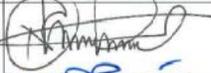
## 4.0 RECOMMENDATIONS

PBOs shall be guided and anchored in the principles and values of the constitution of Kenya, 2010 as enshrined in Article 10

1. As currently crafted the PBO Act does not provide for a concrete definition of what a PBO is; such definition is important.
2. PBOs should be registered under one legal regime bearing in mind that such harmonization requires broader consideration as it has implications on other legislation. Commencement of the PBOs Act should be done pursuant to article 116 of the Constitution of Kenya, 2010 on the coming into force of laws.
3. Appointments to the Authority should be subject to the State Corporation Act
4. The Authority be sufficiently empowered to effectively discharge its mandate and enhance information disclosure by PBOs for public accountability through appropriate rules and regulations
5. Transparency, accountability and monitoring of donors, stakeholders and beneficiaries in accordance with international financial reporting standards (IFRS) and more specifically on disclosure of sources and application of funds.
6. A percentage of donations received by PBOs be given to the Authority to ensure effective regulation
7. National interests and National security be addressed during registration and post registration of PBOs. Further, PBOs must uphold the security, cultural and religious values of Kenyans, the PBO Act be amended to prohibit registration of any public benefit organisation that is involved in promotion and advocacy of indecent acts as provided for in the Penal Code under Section 162-165 or is involved in promotion of the national interest of another state or is involved in recruitment, training and incitement of persons to undertake terrorist activities.
8. A representative from the Ministry in charge of National Security be a member of the Board of the Authority.
9. All proposed amendments should safeguard and ensure an enabling environment to enhance complementarity between state and non-state actors.
10. Strengthen collaboration between National Government, County Government and PBOs.

APPENDICES : (MEMORANDA RECEIVED FROM PUBLIC HEARINGS)

SIGN OFF SHEET FOR PUBLIC BENEFIT ORGANISATIONS (PBO) TASKFORCE ON THE PROPOSED AMENDMENTS TO THE PBO ACT, 2013

NO	NAME	ORGANISATION	SIGNATURE
1.	Hon. Sophia Abdi Noor	Chairperson	
2.	Fazal Mahamed Yusuf	NICE-CHAIRPERSON	
3.	Juwana Akinyi Otiend	NGOs BOARD	
4.	SARAH MUKOTA	KLWV	
5.	GERALD MACHARIA	CLINTON	
6.	STEPHANIE MURRAY	CSO REF CRT	
7.	Jennifer Shamala	ADVOCATE	
8.	Wilson K. Kipkazi	NGO's Council	
9.	Lilian Mbugo-Omolu	NEPAD MDAP	
10.	EDDYSA H. NYALE	MICNG	
11.	LINDON NICOLAS OTIEND	NGOs BOARD	
12.	FRANCIS KURIA KAGEMA	Inter-Religious Comm of Kenya	